



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and confirmed that the tenant served the landlords with the notice of hearing package via Canada Post Registered Mail. The landlords' stated that the package was date stamped on February 5, 2016 and that the landlords had picked it up a few days later. Both parties confirmed that neither party submitted documentary evidence.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on September 1, 2015 on a fixed term tenancy.

The tenant stated that the fixed term was to end 3 months later and then was extended for 1 month. The landlord disputed this stating that the fixed term was for 3 months ending on November 30, 2015. The tenant stated that the monthly rent was \$5,000.00 and was then

lowered to \$4,500.00 for the 1 month extension. The landlord disputed this stating that monthly rent was \$5,500.00.

Both parties agreed that the tenant paid a \$2,750.00 security deposit and that the tenancy ended on November 30, 2015. The tenant provided affirmed testimony that he did not provide his forwarding address in writing to the landlord for the return of the security deposit.

The tenant seeks a monetary claim of \$2,790.00 which consists of:

\$2,750.00	Security Deposit
\$40.00	Interest

The tenant provided affirmed testimony that after the tenancy ended the landlords have not returned the original \$2,750.00 security deposit and is seeking \$40.00 in interest for the security deposit.

The landlords claimed that the tenant failed to attend a condition inspection report after two attempts to schedule one was made and that as such, the tenant extinguished his right against the security deposit. The tenant disputed this. The landlords provided affirmed testimony that two emails were sent on November 27 and 29<sup>th</sup> requesting the tenant to choose a date for the condition inspection report for the move-out. The landlords confirmed that no dates or times were set and that after the offers to allow the tenant to choose a date and time went unanswered the landlord failed to serve a notice of final opportunity to schedule a condition inspection.

### Analysis

Section 24 of the Residential Tenancy Act states that the right of the tenant to the return of a security deposit is extinguished if the landlord has complied with section 23 (3) [2 opportunities for inspection].

Section 23 (3) of the Act states the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. In this case, the landlord stated that the tenant was emailed on November 27 and again on the 29<sup>th</sup> requesting the tenant to set an inspection date for the move-out. It was clarified with all parties that the landlords did not offer a date and time on either occasion to conduct a condition inspection report. The landlords confirmed that it was their practice to allow the tenant to decide. The landlords also confirmed in their direct testimony that no Notice of a Final Opportunity to Schedule a Condition Inspection (#RTB-22) was completed or served to the tenant. As such, I find that the tenant's right to the security deposit has not been extinguished.

As such, section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case, the landlord has not filed for dispute to retain the security deposit within 15 days after the end of the tenancy, nor has the tenant provided his forwarding address in writing to the landlord for return of the security deposit.

I find based upon the affirmed testimony of both parties that the tenant has established a claim for return of the \$2,750.00 security deposit. The landlords confirmed in their direct testimony that no application was filed to dispute the return of the security deposit and both parties confirmed that the tenant did not give permission for the landlord to retain the security deposit.

The tenant also applied for \$40.00 in interest for the return of the security deposit. The Act does not allow for interest to be accumulated during this time period. As such, the tenant's request for \$40.00 in interest is dismissed.

The tenant having been successful is entitled to recovery of the \$100.00 filing fee.

#### Conclusion

The tenant is granted a monetary order for \$2,850.00.

This order must be served upon the landlord. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 22, 2016

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Residential Tenancy Branch