



# 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 an Application by the Tenants for a monetary order for return of the security deposit paid to the Landlord and for the return of the filing fee for the Application under the Residential Tenancy Act (the “Act”).

One of the Tenants and an Agent for the Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

I note that prior to the end of the hearing, which was conducted by teleconference call, the Agent for the Landlord made derogatory remarks about the Act and informed me that she was hanging up and not participating any further in the hearing.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

### Background and Evidence

The Tenants paid the Landlord a security deposit of \$825.00 on or about May 1, 2015. The Tenants vacated the premises on or about April 30, 2016.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it in an email to the Landlord on or about May 4, 2016. The Agent for the Landlords acknowledged receiving the Tenants contact information at that time. I find that for the purposes of the Act, the Landlord was sufficiently served with the forwarding address to return the deposit to.

The Tenants did not sign over a portion of the security deposit.

The appearing Tenant testified that the Landlord did not perform an incoming or outgoing condition inspection report.

The Agent for the Landlord claimed the Tenants had left a wall behind a mirror in the rental unit damaged, and that is why they kept the deposit. The Agent testified they had kept all the security deposit.

The appearing Tenant testified that the Agent for the Landlord had actually returned a portion of the security deposit in the amount of \$439.13.

### Analysis

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to the Act the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Reproduced as written.]

In any event, I note that the Landlord extinguished the right to claim against the security deposit by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act.

I note that the security deposit is held in trust for the Tenants by the Landlord.

At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

If the Landlord and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator after a hearing in which the Landlord proves their claims, or with the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Agent for the Landlord testified about the condition of the rental unit after the Tenants left; however, the Landlord is unable to make a monetary claim through the Tenants' Application. In any event, the Landlord's right to claim against the security deposit was extinguished when they failed to perform an incoming condition inspection report at the outset of the tenancy.

I also note that the incoming condition report is what landlords would use to prove the condition of the rental unit at the outset of the tenancy, as both the landlord and the tenant agree to the condition at the outset of the tenancy by using this form. In this case the Tenant testified that the Agent for the Landlord simply left the Tenants copies of the blank condition inspection report to fill out on their own. As the report was not completed properly in accordance with the Act with the Landlord or Agent present, the

Landlord extinguished their right to claim against the deposit or to retain any portion of it.

If the Landlord feels there are damages to the rental unit they have to file their own Application to keep the security deposit with the 15 days, as explained above. Here, the Landlord may still file an application for alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing and the Landlord must pay the Tenants the sum as described below.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,360.87**, comprised of double the security deposit ( $2 \times \$850.00 = \$1,700.00$ ), *less the \$439.13 already paid to the* Tenants, plus the \$100.00 fee for filing this Application.

### Conclusion

The Landlord and their Agent failed to follow the Act in regard to performing incoming and outgoing condition inspection reports and in how to apply for the retention of the security deposit, and therefore, the Tenants are entitled to double the deposit, less the amount already paid back by the Landlord, and to recover the filing fee for the Application. The Tenants are given a formal Order in the amount of **\$1,360.87** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 28, 2016.

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Residential Tenancy Branch