



# 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 landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to retain a portion of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant landlords did not attend this hearing, which lasted approximately 13 minutes. The two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application.

### Preliminary Issue – Dismissal of Landlords' Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the landlords, I order the landlords' entire application dismissed without leave to reapply.

### Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- **a landlord's application to retain all or part of the security deposit;**

*or*

- *a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. **The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.***

As per the above, I am required to deal with the tenants' security deposit because the landlords have applied to retain a portion of it, even though the landlords have not appeared at this hearing.

#### Issue to be Decided

Are the tenants entitled to a return of their security deposit?

#### Background and Evidence

The tenants testified regarding the following facts. This month-to-month tenancy began on November 15, 2015 and ended on June 30, 2016. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlords continue to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlords on July 14, 2016 by way of a letter of the same date, that was left in the landlords' mailbox. In their application written evidence, the landlords provided a copy of this letter and confirmed that they received it on July 14, 2016. The landlords did not have written permission to keep any amount from the tenants' security deposit.

The landlords filed their application for dispute resolution on July 15, 2016, to retain \$442.00 from the tenants' security deposit, for damages and cleaning. The tenants stated that they were seeking the return of their security deposit from the landlords.

#### Analysis

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenants at this hearing. The tenancy ended on June 30, 2016. The tenants provided a written forwarding address to the landlords on July 14, 2016 and the landlords acknowledged receipt of the letter on that date. The tenants did not give the landlords written permission to retain any amount from their security deposit. The landlords did not return the deposit to the tenants. Although the landlords applied to retain the deposit on July 15, 2016, within 15 days of the forwarding address being provided, the landlords' right to claim against the deposit for damage was extinguished by sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy. The landlords' application for this hearing related to damages of \$442.00, which they said the tenants caused.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenants' security deposit of \$650.00. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit, totalling \$1,300.00, from the landlords. The tenants are not required to specifically seek double the value of the deposit, as long as they do not waive their rights to it, which they did not during the hearing.

### Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary Order in the tenants' favour in the amount of \$1,300.00 against the landlord(s). The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. 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: January 17, 2017

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Residential Tenancy Branch