



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants requested a Monetary Order for return of double their security deposit and to recover the filing fee.

The hearing was conducted by teleconference on 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to return of their security deposit?
2. Should the Tenants recover the filing fee paid?

### Background and Evidence

D.E. testified that the tenancy began January 2012. Initially monthly rent at the time the tenancy began was \$1,500.00 and the Tenants paid a \$750.00 security deposit. A copy of the cheque for the security deposit dated January 2, 2012 was also provided in evidence. The parties entered into another tenancy agreement signed August 8, 2014

for a fixed one year term beginning July 28, 2014 following which the tenancy went month to month.

D.E. testified that they moved out of the rental unit on June 15, 2016.

D.E. testified that the Landlord performed both a move in and move out condition inspection.

The Tenants provided the Landlord with their forwarding address in writing on June 15, 2016 by email; a copy of that email was provided in evidence. The Tenants sent a further letter to the Landlord on July 1, 2016 again requesting return of their security deposit. D.E. testified the letter was sent by courier.

D.E. testified that the Landlord returned \$263.00 of the \$750.00 security deposit. D.E. confirmed that they did not agree to these deductions.

Z.O. also testified. Z.O. confirmed that the Tenants paid a \$750.00 security deposit and that he returned only \$263.00 of the security deposit.

Z.O. also testified that he did not have the Tenants' agreement to retain any portion of the Tenants' security deposit.

Z.O. also confirmed that he did not make an application for dispute resolution within 15 days of receiving the Tenants' forwarding address in writing and that he is now aware that he was required to do so.

### Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

#### **Return of security deposit and pet damage deposit**

**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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

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 Tenant, to retain a portion of the security deposit, as required under section 38.

The security deposit is held in trust for the Tenants by the Landlord. If the Landlord and the Tenant 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.

The Landlord may only keep all, or a portion, of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant and an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the Landlord submitted evidence about the condition of the rental unit after the Tenant left; however, the Landlord is unable to make a monetary claim through the Tenants' Application. The Landlord has to file their own Application to keep the deposit within the 15 days of certain events, as explained above.

The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

*Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$1,237.00**, comprised of double the security deposit calculated as follows:

$\$750.00 \text{ (security deposit)} \times 2 = \$1,500.00 - \$263.00 \text{ (amount returned)} = \$1,237.00$

As the Tenants have been successful I also award them recover of the **\$100.00** filing fee for a total Monetary Order in the amount of **\$1,337.00**.

### Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$1,337.00** 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 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: February 22, 2017

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Residential Tenancy Branch