



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD

### Introduction

On August 22, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlords to return of all or part of the pet damage deposit or security deposit.

The matter was scheduled as a conference call hearing. Both parties 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 make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?

### Background and Evidence

The parties testified that the tenancy commenced September 1, 2013, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,400.00. was due on the first day of each month. The Tenants paid the Landlords a security deposit of \$700.00.

The parties testified that the tenancy ended when the Tenants moved out on July 31, 2016.

The Tenant B.G. testified that the Tenants provided the Landlord with their forwarding address in writing two days after the end of the tenancy.

The Tenant B.G. testified that there was no agreement written or verbal allowing the Landlord to keep the security deposit for the cost of cleaning or damage.

The Landlords acknowledged that the Tenants provided their forwarding address in writing in August 2016.

The Landlords testified that the Tenant B.G. participated in a walkthrough of the unit on August 1, 2016, and that damage was pointed out to the Tenant. The Landlord H.W. testified that the Tenant was told he would not get his deposit back.

The Landlord H.W. testified that the Tenant approached her few days later asking for the deposit and the Landlord told the Tenant that the deposit will not be returned because of damage.

The Landlords testified that they believe the parties reached a verbal agreement that the Landlords could keep the deposit because of damage to the rental unit.

### Analysis

Section 38(4) of the Act states that a Landlord may retain an amount from a security deposit or a pet damage deposit if 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.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenants forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states:

*If the Landlords does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the Tenants' agreement to keep the deposit, the Landlords must pay the Tenants double the amount of the deposit.*

After considering the testimony and evidence of the parties, and on a balance of probabilities, I make the following findings:

I find that the Tenants provided their forwarding address to the Landlord in August 2016. The Landlords did not apply for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no written agreement from the Tenants that the Landlord could retain the security deposit. The Landlords were required to repay the security deposit within 15 days of receiving the Tenants' forwarding address.

Pursuant to section 38(6) of the Act, I order the Landlords to pay the Tenants double the amount of the security deposit. I grant the Tenants a monetary order in the amount of \$1,400.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

### Conclusion

The Landlords failed to return the security deposit in accordance with section 38 of the Act.

I grant the Tenants a monetary order for double the security deposit in the amount of \$1,400.00.

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