



# 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 landlords and for the return of the filing fee for the application.

Both tenants and both landlords attended the hearing. Both parties provided affirmed testimony and had the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the submissions of the other party.

Service of the tenants' application materials and the landlords' responsive evidence was not at issue.

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.

### Issue(s) to be Decided

Are the tenants entitled to return of their security deposit?

Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

It was agreed that this tenancy began in August of 2007, at which point the tenants paid the landlords a security deposit of \$437.50, which the landlords continue to hold. It was also agreed that the tenancy ended on October 31, 2016, and that the tenants provided

the landlords with a letter dated October 26, 2016 that included their forwarding address. A copy of that letter was in evidence.

It was further agreed that the landlords did not complete a condition inspection or fill out a condition inspection report at the beginning of the tenancy.

The male landlord testified that at the end of the tenancy the tenants asked that the condition inspection be conducted while they were still in the process of moving out and the landlords did not notice certain things at that time. The landlords did not later attempt to coordinate another inspection with the tenants in attendance. Instead they completed their own inspection report without the tenants present and then sent it to the tenants for signature.

The landlords' primary claims, as set out in their condition inspection report, and as explained in more detail in the hearing, were for the cost of cleaning the ceiling of the rental unit, which had been affected by smoke, and the cost of disposing of a storage shed.

The tenants did not agree with the landlords' assessment and did not sign the condition inspection report or sign over a portion of the security deposit. Instead the tenants brought this application for return of their security deposit.

The landlords confirmed that they did not apply to retain the security deposit within 15 days of the end of the tenancy or receipt of the forwarding address. They also confirmed there are no other orders with respect to this security deposit.

### Analysis

The Act contains comprehensive provisions on security and pet damage deposits. Under section 38, a landlord is required to handle a security deposit as follows (emphasis added):

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.

Based on the language above and the agreed upon facts, I find that the landlords have breached s. 38 of the Act and are required to pay the tenants double the security deposit.

Sections 24 and 36 of the Act also remove a landlord's ability to claim against a security deposit or pet damage deposit if the landlord fails to perform a written condition inspection report at both the beginning and the end of the tenancy. A landlord is in the business of renting and therefore has a duty to abide by the Act. As explained during the hearing, a security deposit is held in trust for the tenants by the landlord, and the landlord may not keep it without reaching an agreement with the tenants or applying to retain it.

The landlords here testified about the condition of the rental unit after the tenants left and submitted some documentary evidence in support of same. However, the landlords cannot make a monetary claim through the tenants' application. The landlords may still file an application for alleged damages. However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I order, pursuant to s. 38, that the landlords pay the tenants the sum of **\$984.35**, comprised of double the security deposit (2 x \$437.50), plus interest payable on the security deposit for 2007-2008 in the amount of \$9.35, and the \$100.00 fee for filing this application.

Conclusion

The tenants are given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with the order, it 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 s. 9.1(1) of the *Residential Tenancy Act*.

Dated: February 7, 2017

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Residential Tenancy Branch