



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNSD

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants disputed the amount charged for a security deposit and requested return of this deposit.

The hearing was conducted by teleconference on March 6, 2017. Both parties called into the hearing.

### Issue to be Decided

1. Are the Tenants entitled to return of any amounts paid over the permitted amount for a security deposit?
2. Are the Tenants entitled to recovery of their security deposit?

### Background and Evidence

The Tenant, D.B., testified that the tenancy began September 1, 2015. She stated that monthly rent was \$2,700.00 and claimed they paid \$2,650.00 as a security deposit.

D.B. testified that the Landlord did a move in condition inspection report but did not provide a copy of the report to the Tenants.

D.B. testified that they moved out of the rental unit August 31, 2016. She stated that they provided the Landlord with their forwarding address by text message. D.B. stated that the Landlord did not confirm receipt of this message.

The Landlord's translator, G.P., claimed that a portion of the \$2,650.00 charged as a deposit was for a pet damage deposit. She further claimed this was provided for in the residential tenancy agreement which had been signed by the Tenants. That document was not before me.

## Analysis

The Tenants submit that they paid more than the allowable amount for a security deposit. The amount of a security deposit is limited by section 19 of the *Act* which reads as follows:

### **Limits on amount of deposits**

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Accordingly, a Landlord may accept the equivalent to ½ month's rent for a security deposit, *and* ½ month's rent for a pet damage deposit such that the total deposits paid equal the monthly rent.

The Landlord's translator submitted the amount collected included such a pet damage deposit.

As neither party submitted the residential tenancy agreement in evidence, I am unable to determine whether the deposit paid included such a pet damage deposit and therefore whether or not it was an allowable amount.

In any case, the tenancy has ended such that the Tenants seek return of the full deposit paid.

The return of a security deposit is dealt with in section 38 of the *Residential Tenancy Act*. Section 38(1) of the *Act* provides that a Landlord has 15 days after the later of the date the tenancy ends or the date the Landlord receives the Tenants' forwarding address in writing.

The Tenants submitted that they sent their forwarding address to the Landlord by text message; they testified this message was not confirmed as received by the Landlord. I find that sending an address by text message does not satisfy the requirement of section 38(1)(b); this may have been sufficient in the event the Tenants could provide supporting evidence that they specifically asked the Landlord to send their deposit to that address, and can confirm the Landlord received and acknowledged the message.

During the hearing the Tenants confirmed their forwarding address is as provided on their Application for Dispute Resolution. I find that the Landlord is now in receipt of the Tenants' forwarding address in writing and therefore has 15 days, pursuant to section 38(1) of the *Act* to either make an application for dispute resolution or return the deposit to the Tenants. The Landlord was cautioned to consider the extinguishment provisions in section 38.

The Tenants' claim for return of double their security deposit is dismissed with leave to reapply.

### Conclusion

The Tenants failed to prove they paid a security deposit in excess of the amount permitted by the *Act*. The Tenants also failed to prove they provided their forwarding address in writing to the Landlord as required by section 38(1). Their application for return of double the security deposit paid is dismissed with leave to reapply. The Landlord has 15 days from the date of the hearing to make an application for Dispute Resolution or to return the deposit to the Tenants.

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: March 06, 2017

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Residential Tenancy Branch