



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both tenants were represented by their agent (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or evidentiary materials. The landlord confirmed receipt of the tenants' application package. The tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective application and evidence.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary award as requested from the landlord?

### Background and Evidence

The parties agreed on the following facts. This tenancy originally began on May 1, 2015 for a fixed term scheduled to end on April 30, 2018. The monthly rent was \$900.00 payable on the first of each month. A security deposit of \$450.00 was paid at the start

of the tenancy and is still held by the landlord. The parties did not prepare a condition inspection report at the start of the tenancy.

The parties entered into an agreement dated June 29, 2016 providing that the tenancy would end on July 31, 2016. The parties referred to this agreement alternatively as a new tenancy agreement and addendum to the first tenancy agreement. The agreement also provides that the landlord would pay the tenants the sum of \$800.00.

The tenants moved out of the rental unit on July 31, 2016. They provided a forwarding address to the landlord by letter dated August 5, 2016. The landlord confirmed receipt of the letter with the tenants' forwarding address. A condition inspection report was not prepared at the end of the tenancy. The landlord testified that he did not contact the tenants to have them attend an inspection of the rental unit. The landlord said that he inspected the rental unit himself with the assistance of his realtor. The landlord believed the rental unit required repairs and cleaning. The landlord confirmed that he has not made an application pursuant to the Act, to retain the security deposit. The landlord testified that while he agreed to pay the tenants \$800.00 in the agreement of June 29, 2016, he believes that he should no longer be required to pay that amount as the tenants have left the rental unit in a state of disrepair.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. This provision does not apply only if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

I find that the tenants provided written notice of the forwarding address on August 5, 2016. I accept the evidence of the parties that the landlord failed to return the security deposit to the tenant within 15 days of August 5, 2016, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period. I understand that the landlord felt the rental unit required cleaning and repairs. However, if the landlord had concerns arising from the condition of the rental unit, the landlord should have addressed these matters within 15 days of receiving a copy of the tenants' forwarding address or within 15 days of the end of tenancy.

The landlord submitted evidence of the rental unit's condition and the cleaning and repairs performed by the landlord. All of this evidence is irrelevant to the issue of the return of the security deposit.

It is inconsequential if cleaning or repairs to the rental unit were required, if the landlord does not take proper action to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlord cannot decide to simply keep the damage deposit as recourse for their loss.

In addition, the parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
...  
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived the right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$900.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

I find that there was an agreement between the parties where the landlord agreed to pay the tenants the amount of \$800.00. I accept the evidence of the parties that the landlord has not paid that amount. The June 29, 2016 agreement does not provide any obligation on the tenants to clean the rental unit. The agreement does not provide any

circumstances where the landlord would not be required to pay the \$800.00 to the tenants. Accordingly, I find that pursuant to section 67 and the agreement entered into by the parties, the landlord is obligated to pay \$800.00 to the tenant.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,700.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: March 16, 2017

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Residential Tenancy Branch