



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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. The landlord RP primarily spoke for the two landlords (the “landlord”).

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

### Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages as claimed?

Are the landlords entitled to retain the security deposit? If not is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlords’ failure to comply with the provisions of section 38 of the *Act*?

Are either party entitled to recover the filing fee for this application from the other?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in July of 2016 and ended on December 31, 2016. The monthly rent was \$1,300.00 payable on the first. The tenant paid a security deposit of \$650.00 at the start of the tenancy.

The parties testified that no condition inspection report was prepared at the start of the tenancy. No condition inspection report was prepared at the end of the tenancy. The landlord testified that he contacted the tenant and provided two opportunities for an inspection but the tenant did not participate. The tenant testified that he was not contacted by the landlord and given an opportunity to participate in an inspection. The parties agreed that the tenant provided a forwarding address in writing on January 3, 2017.

The landlord testified that the rental unit required cleaning and repairs after the tenant had vacated. The landlord said that the tenant arranged for a cleaning service to perform some cleaning in the rental unit and agreed in writing that the landlord could “pay them out of the 650 deposit”. The landlord provided an email conversation with the tenant as evidence of the tenant’s written consent. The landlord testified that based on the tenant’s consent, the rental unit was cleaned and \$254.71 was deducted from the tenant’s security deposit. The parties testified that the landlord provided the tenant with a cheque in the amount of \$395.29, representing the security deposit less the landlord’s costs for cleaning.

### Analysis

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 to the landlord 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.

Furthermore, section 38 (5) of the *Act* provides that the landlord’s right to claim for damages or obtain the tenant’s written consent to retain the security deposit for damages is extinguished when the landlord does not complete a condition inspection report at the start of the tenancy.

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 and 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.

I accept the evidence of the parties that the tenant provided written notice of a forwarding address on January 3, 2017. The parties testified that the landlords failed to return the full security deposit to the tenant within 15 days of January 3, 2017, 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. The landlords filed their application on January 23, 2017, outside of the 15 days from January 3, 2017, as granted under the *Act*.

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.

Consequently, under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,300.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in his application, he is entitled to recovery of the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,400.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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