



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF, SS

### Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- authorization to serve documents (not including notice of hearing package) in a different way than required by the *Act*.

The tenant did not participate in the conference call hearing, which lasted approximately 35 minutes. Landlord DG and landlord VG (collectively "the landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Landlord VG testified that on September 19, 2016 she forwarded the landlord's application for dispute resolution hearing package via xpress post to the tenant, which included the signature option. The landlord provided a tracking number as proof of service. Based on the testimony of landlord VG and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application on September 24, 2016, the fifth day after its registered mailing.

The landlords did not provide testimony or evidence in relation to their application to serve documents contrary to the *Act*, therefore this portion of their claim is dismissed without leave to reapply.

### Issue(s) to be Decided

Are the landlords authorized to retain the tenant's security deposit?

Are the landlords authorized to recover the filing fee for this application from the tenant?

### Background and Evidence

As per the testimony of landlord VG, the tenancy began on November 1, 2014 on a month-to-month basis. Rent in the amount of \$1,100.00 was payable on the 15th of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenant vacated the rental unit on September 1, 2016.

The landlords testified that written condition inspection reports were not conducted at move-in or move-out. Landlord VG testified that the tenant provided his forwarding address on September 1 or September 2, 2016.

The landlords are seeking to retain the security deposit in the amount of \$500.00 to offset the costs they incurred in repairing the rental unit. Landlord DG testified that at the end of tenancy the rental unit was left significantly damaged. Specifically the walls contained holes and the carpet soiled to the extent replacement was required. The landlords confirmed that they did not provide any documentary evidence for this hearing.

The landlords are also seeking to recover the \$100.00 filing fee from the tenants.

### Analysis

When a landlord fails to properly complete a condition inspection report or give a copy to the tenant, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlords in this case did not complete written condition inspection reports, they lost their right to claim the security deposit for damage to the property.

The landlords were therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlords received the tenant's forwarding address on September 1 or September 2, 2016 but did not return the security deposit within 15 days of either date.

Because the landlords' right to claim against the security deposit for damage to the property was extinguished, and they failed to return the tenant's security deposit within 15 days of having received his forwarding address, section 38 of the *Act* requires that the landlord pay the tenant double the amount of the deposit.

This finding does not preclude the landlords' right under section 67 of the *Act*, to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The landlords have extinguished their right to retain the security deposit and are not authorized to retain the security deposit.

I issue a monetary order in the amount of \$1,000.00 to the tenant for the security deposit.

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 21, 2017

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Residential Tenancy Branch