



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

On September 22, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit; for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee for the Application.

Both parties appeared at the hearing and provided affirmed testimony. The hearing process was explained and the parties were asked if they had any questions. The Parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord provided a one page document to the Residential Tenancy Branch in response to the Tenant's Application. The Landlord failed to provide the tenant with a copy of the one page document and therefore the document will not be considered in this hearing.

The Tenant did not provide any documentary evidence in support of her application.

The Parties applied for a previous hearing which took place on August 24, 2016, and was dismissed.

### Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to the return of 1 months rent?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced February 15, 2016, as a month to month tenancy. Rent in the amount of \$1,200.00 was due to be paid on the fifteenth day of each month. The Tenants paid the Landlord a security deposit of \$600.00. The Tenants submitted that they moved out of the rental unit on March 15, 2016. Neither party provided a copy of a tenancy agreement.

The Tenants previously applied for dispute resolution and her application was dismissed with leave to reapply.

The Landlords previously applied for dispute resolution but failed to attend the hearing and their Application was dismissed without leave to reapply.

The Tenant testified that the Landlord did not return the security deposit or pet damage deposit after they moved out of the rental unit, or after she provided them with her forwarding address.

The Tenant testified that she provided the Landlord with her forwarding address in writing on September 29, 2016, by sending it to them at their address using registered mail.

The Tenant is seeking the return of double the security deposit.

The Tenant is also seeking compensation in the amount of one month's rent due to the Landlord having an illegal suite and turning the heat and lights off on the Tenants. The Tenant testified that the Landlord turned the heat and lights off on them on March 15, 2016, which is the same day they moved out of the rental unit.

In response, the Landlord D.W. testified that he received the Tenant's forwarding address in late September, and that the Tenant was asking for the return of her security deposit.

The Landlord submitted that he did apply for dispute resolution on April 12, 2016, requesting to keep the security deposit for unpaid rent, but he failed to attend the

hearing. The Landlord did not return the deposit because he believes the Tenants owe him rent.

### Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

The Tenants' previous Application was dismissed with leave to reapply on August 24, 2016. The Tenant applied for this hearing on September 22, 2016. The Tenant testified that she sent her forwarding address in writing to the Landlord using registered mail on September 29, 2016.

I find that the Tenant applied for dispute resolution prior to sending her forwarding address to the Landlord. The Tenant's Application is premature because she must give the Landlord an opportunity to return the deposit or file for dispute resolution before she can make an Application.

The Landlord's previous Application to keep the security deposit was dismissed without leave to reapply, so dismissing the Tenants' Application to reapply would result in another hearing, to which the Landlord is barred from making a claim.

In the circumstances, I find that the Landlord did not return the Tenants security and has no authority to retain it. I decline an order for the Landlord to return double the amount of the security deposit because the Tenants' application was premature.

I order the Landlord to repay the Tenants the security deposit in the amount of \$600.00.

I dismiss the Tenants claim for 1 month of rent in compensation for the allegation that the Landlord turned off the heat and lighting on March 15, 2016. The Landlord denied turning off the lights and heat. The Tenant provided no documentary evidence to support her allegation. When two parties provide equally believable but different testimony on what occurred, the burden of proof rests with the Applicant. There is insufficient evidence from the Tenants that the Landlord turned off the heat and lights and that they suffered a loss.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants' paid to make application for dispute resolution.

I decline to award the Tenants the cost of the filing fee for the previous hearing.

I grant the Tenants a monetary order in the amount of \$700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord failed to return the security deposit to the Tenants in accordance with the legislation and have no authority to keep it.

The Tenants are awarded the return of the security deposit and the cost of the filing fee. I grant the Tenants a monetary order in the amount of \$700.00.

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 28, 2017

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Residential Tenancy Branch