



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord DF represented both landlords (the "landlord"). The tenant DB represented both co-tenants (the "tenant").

As both parties were in attendance I attempted to confirm that there were no issues with service of the tenants' application for dispute resolution or either party's evidentiary materials. The landlord confirmed receipt of the tenants' application package. The tenant testified that she was not served the landlords' evidence. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenants were deemed served with the landlords' evidence in accordance with sections 88 and 90 of the *Act*. I find that the landlords were served with the tenant's application and evidence in accordance with sections 89 and 90 of the *Act*.

### 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 landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary order for damages as claimed?

Are the tenants entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The parties agreed on the following facts. This tenancy started in December 2010 and ended November 1, 2014. The rental unit is a suite in a detached home. The tenants occupied one unit and there were other tenants in the adjoining unit of the property. The monthly rent throughout the tenancy was \$950.00 and the tenant was also responsible for paying 1/3 of the electric bill for the property. The tenants provided a security deposit of \$475.00 at the start of the tenancy. A condition inspection report was not prepared at the start of the tenancy.

The parties confirmed that no condition inspection report was prepared at either the start or end of the tenancy. The landlord confirmed that he has not made an application in accordance with the *Act* to retain the security deposit. The landlord testified that there was an arrear of \$386.83 for unpaid utilities at the end of the tenancy. The landlord said that there was an oral agreement with the tenants to use the security deposit to pay the arrear but there was written records of this agreement kept.

The tenant testified that a forwarding address was provided to the landlord by email on November 24, 2014. The tenant said they have not provided any written authorization that the landlord may retain the security deposit. The tenant said that the agreement to pay 1/3 of the electric bill was based on the number of occupants in the neighboring unit. The tenant believes that they should only have been responsible for paying ¼ of the electric bills and calculate that they overpaid by \$1,163.25 over the course of the tenancy.

### 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 forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenants provided written notice of the forwarding address on November 24, 2014. I accept the evidence of the parties that the landlords failed to return the full

security deposit to the tenant within 15 days of November 24, 2014, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlords make an application claiming against the security deposit during that period.

If the landlords had concerns arising from the unpaid utilities, the landlords could have addressed those matters within 15 days of receiving a copy of the tenants' forwarding address or within 15 days of the end of tenancy. Even if there was a legitimate arrear the landlords must receive written authorization from the tenant pursuant to the *Act* to apply the security deposit. The landlords cannot decide to simply keep the damage deposit as recourse for their loss without following the legislative steps.

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 landlords have 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 landlords have 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 their 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 an \$950.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

I find the tenants have provided insufficient evidence in support of their claim for overpayment of utility bills. The parties both testified that the tenancy agreement provided that the tenants were responsible for 1/3 of the monthly electric bill. The tenant testified that she believed the utility bill should have been reconsidered during the tenancy. I find insufficient evidence that the utility bill was miscalculated and should have been ¼ of the bill for the rental property. While I accept the evidence of the

tenants that they approached the landlord with the intention of renegotiating their share of the electric bills there is no evidence that a new agreement was ever reached. I find that the tenancy agreement provided that the tenants were responsible for 1/3 of the monthly electric bill during the term of the tenancy. Accordingly, I dismiss this portion of the tenants' claim.

As the tenants were partially successful in their application, they are entitled to recovery of the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,050.00 against the landlords. The tenants are 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 30, 2017

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Residential Tenancy Branch