



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            FF MNSD

### Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the landlord requested:

- an order to keep all or part of the security deposit pursuant to section 38 of the *Act*; and
- a return of the Filing Fee pursuant section 72 of the *Act*.

Both the landlord and the tenants appeared at the hearing. The tenants were represented at the hearing by tenant M.C. (the “tenant”). The tenant confirmed receipt of the landlord’s application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail on February 17, 2017. Pursuant to sections 88 and 89 of the *Act* I find the tenants to have been served with the landlord’s application and evidentiary package. The tenants did not submit written evidence.

### Issue(s) to be Decided

Can the landlord retain the tenants’ security deposit?

Is the landlord entitled to a return of the filing fee?

### Background and Evidence

Testimony was provided by the landlord that this tenancy began on September 1, 2016. The tenants vacated the rental unit on December 25, 2016 following the issuance of a 1 Month Notice to End Tenancy for Cause. Rent was \$1,350.00 per month and security and pet deposits (the deposits) of \$675.00 each were collected at the outset of the tenancy and continue to be held by the landlord.

The landlord explained that she sought to retain \$305.00 due to cleaning that needed to be performed following the tenants vacating the rental unit. In addition the landlord sought compensation for a change of lock that was required. The landlord provided the hearing with copies of two receipts demonstrating that she had paid \$100.00 for cleaners following the conclusion of the tenancy and \$205.00 for the replacement of a lock.

The tenant gave sworn testimony that she appeared at a hearing before the *Residential Tenancy Branch* on January 9, 2017 to dispute the landlord's 1 Month Notice, and to seek various forms of relief against the landlord, including the return of the pet and security deposit. In a decision from the January 9, 2017 hearing the arbitrator dismissed the tenants' application for a return of their deposits with leave to re-apply. The arbitrator in the matter dismissed the application ruling, "that the tenants' application for the return of their deposits was submitted on November 29, 2016, well before the tenancy ended...and therefore against the principles of natural justice."

The tenant explained that she and her roommate moved out of the rental unit on December 25, 2016. They provided the landlord with a copy of their forwarding address on February 3, 2017 via text message. The landlord acknowledged receipt of the tenants' address on this date. The tenant explained that she did not perform a condition inspection report with the landlord but noted that the landlord was out of the country when she and her roommate vacated the rental unit.

The tenant disagreed that she should surrender any part of her deposits as she testified that the debris that was left in the rental unit included recycling that was sorted and ready to be put out, along with some boxes that the occupant of another rental suite in the building asked to keep. Photographic evidence provided to the hearing by the landlord supports the testimony of the tenant. The photos demonstrate well organized bundles of recycling and cardboard boxes.

While a condition inspection report was completed by the parties on September 1, 2016, no condition inspection was performed at the conclusion of the tenancy. The landlord stated that she was unaware that the tenant had vacated the rental unit. The tenant explained that she had been issued a 1 Month Notice with a move out date of December 31, 2016 and therefore moved out of the rental suite on December 25, 2016. The landlord indicated that she was out of the country during December and was unaware that the tenants had moved out. The tenants did not communicate the details of their moving plans to the landlord and the landlord did not provide the tenants with 2 opportunities for a condition inspection at the conclusion of the tenancy as per section 35 of the *Act*.

The tenant also stated that the landlord is attempting to place the cost of replacement locks onto the tenant, despite being ordered by the city to remove the locks following the rental unit being deemed illegal by the city.

#### Analysis – Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit. One of these actions must occur within 15 days after the *later* of either the end of the tenancy and/or upon receipt of the tenants' forwarding address in writing.

Evidence was produced at the hearing that the landlord applied for dispute resolution on February 17, 2017. The landlord acknowledged receiving the tenants' forwarding address on February 3, 2017. She has therefore applied within 15 days of receiving a copy of the tenants' forwarding address.

In addition to the requirements outlined above, section 35 of the *Act* describes the steps that must be taken by both parties following the conclusion of a tenancy. They are described as follows;

*35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Furthermore section 35(2) explains that the landlord must offer the tenant at least 2 opportunities for the inspection.*

The landlord did not provide any testimony that the tenant was offered 2 opportunities for the inspection. No testimony was presented that the landlord took any steps to contact the tenant about an inspection. The landlord explained that the tenant had without notice, vacated the rental unit a week prior to the effective date of an Order of Possession that had been issued.

The *Act* continues by explaining in section 36 that this right to a return of a deposit is only extinguished if;

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

There is little evidence to indicate that the landlord complied with section 35(2) of the *Act*. As described previously, the landlord provided some testimony indicating that she thought the tenant abandoned the rental unit. Under section 37 of the *Act* unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends. The tenant explained that she did not abandon the rental unit but merely vacated the premises 1 week prior to the effective date of the Order of Possession. She noted that the landlord was out of the country and she had no way to contact her. I accept this testimony from the tenant and find that she did not abandon the rental unit. The tenant was also not given 2 opportunities for an inspection of the rental unit and therefore did not waive her right to a return of the security deposit.

In order for the landlord to recover the amount sought in her Monetary Order, the burden of proof is on the landlord. She must demonstrate that there was loss that resulted because of the tenants' actions. I am not satisfied that the landlord has done this. Photographic evidence establishes that the tenants had left the rental unit reasonably clean and undamaged as required by section 37(2)(a) of the *Act*. The tenant explained that it was her sincere understanding that the upstairs tenant would be coming to collect the boxes that she left in a tidy pile. While the rental unit may have been left tidy, it is the tenant's responsibility as per

section 37(2)(a) that the suite be left clean. The landlord did suffer a loss of \$100.00 for cleaning services that were required to remove the debris left in the suite by the tenant.

In addition, the city was the entity that required the landlord to change the locks on the rental unit. No actions of the tenants led to the locks requiring any replacement. The city had ordered the landlord to no longer house people in the rental unit. It was therefore the landlord's decision to change the locks. In addition, had the city not ordered the landlord to comply with their demands, the landlord would most likely have been forced to absorb the cost of the new locks pursuant to section 25 of the *Act* which requires a landlord to re-key a lock for a new tenant.

I therefore dismiss the landlord's application to withhold the entire amount of \$305.00 from the tenants' security deposit. The landlord may withhold \$150.00 of the tenants' security deposit in satisfaction for the expense she incurred removing the debris from the rental unit and for partial repayment of the filing fee. I direct the landlord to return the remaining \$155.00 of the security deposit in accordance with the *Act*.

#### Conclusion

The landlord may withhold \$150.00 of the tenant's security deposit in satisfaction for money owed and in partial satisfaction of the filing fee.

I direct the landlord to return the remaining \$155.00 of the security deposit in accordance with the *Act*. In case that does not happen, I issue a Monetary Order in the tenant's favour in the amount of \$155.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order in the event that the landlord does not return \$155.00 as ordered in this decision. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 27, 2017

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Residential Tenancy Branch