



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for return of the security deposit paid to the landlords and for the application filing fee.

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

Service of the tenant's application and notice of hearing was not at issue. The landlords had submitted two packages of evidence to the Residential Tenancy Branch and the tenant had received only one of them as of the date of the hearing. It was not necessary to refer to the second package of documentary evidence.

### Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlords?

Is the tenant entitled to recover the application filing fee?

### Background and Evidence

It was agreed that the applicant tenant and another tenant together entered into a tenancy agreement with the landlords in September or October of 2016. Rent was \$1,000.00 monthly payable on the first each month. The co-tenant left in the beginning of December, at which point the landlords refunded her what was considered to be her portion of the security deposit.

The applicant tenant and the landlords then negotiated another agreement under which the applicant tenant would remain for a "month or two" at rent of \$800.00 per month. The applicant tenant added to the security deposit still with the landlords. Both landlords and tenant agreed that as of the date of the hearing the landlords hold \$450.00 as the applicant tenant's security deposit. There was no written tenancy agreement entered for this second tenancy.

It was also agreed that the tenant vacated the premises on January 30, 2017 and that she provided the landlords with her forwarding address by text on February 3, 2017. One of the landlords walked through the unit with the applicant tenant. The tenant says that she was assured at this point that her security deposit would be refunded.

It was further agreed that the tenant did not sign over a portion of the security deposit and that the landlords remain in possession of that deposit.

The landlords and the tenant disagree as to whether the tenant gave one month notice to terminate the tenancy as required under the Act. The landlords say that she did not and that they retained her security deposit as compensation for lost rental income. The landlords did not apply to the Residential Tenancy Branch for authorization to retain the security deposit. The landlords have since sold the rental unit.

### Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

Based upon the facts agreed upon by the parties, I find that the landlords are in breach of the Act.

It was agreed that the tenant had not authorized the landlords to retain any portion of the security deposit. It was also agreed that the landlords had not applied within 15 days of the end of the tenancy or receipt of the tenant's forwarding address to retain a portion of the security deposit, as required by s. 38.

The security deposit is held in trust for the tenant by the landlord, who may not keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The landlords may still file an application for loss of rent. However, the issue of the security deposit has been conclusively dealt with in this hearing.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlords pay the tenant the total sum of **\$1,000.00**, comprised of double the security deposit (2 x \$450.00) and the \$100.00 application filing fee.

Conclusion

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: April 25, 2017

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Residential Tenancy Branch