



# 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 the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

### **Issue(s) to be Decided**

Are the tenants entitled to the return of all or a portion of their security and pet damage deposits?

Are the tenants entitled to recover the filing fee from the landlord?

### **Background and Evidence**

This 9 month, fixed term tenancy began on September 1, 2016 with monthly rent set at \$1,400.00. The landlord collected a security and pet damage deposit in the amount of \$700.00 for each deposit. The tenants moved out before the end of this tenancy, on December 30, 2016. The landlord retained a portion of the tenants' security and pet damage deposits, returning \$960.97 to them. The tenants provided a forwarding address to the landlord upon move out on December 30, 2016.

The tenants testified that on October 23, 2016 they had given written notice to the landlord that they wanted to end the fixed-term tenancy early as one of the tenants had to re-locate for a new job. They believed that the landlord had implicitly agreed to mutually end this tenancy early as the landlord responded on October 26, 2016, stating "I'll do my best to find a new tenant and minimize potential losses due to the early departure. I will start the process after Nov. 28, when I come back from Australia". The landlord emailed the tenants on December 11, 2016 informing them that she had found a new tenant for January 1, 2017, but that she "had some related costs that I will charge against the security deposit". The tenants replied asking what the related costs were, and the landlord replied that they are "mainly my time in getting a new tenant". The tenants included the email correspondence in their evidence.

The tenants testified that the landlord did not provide an opportunity for them to schedule a move-out inspection, although they had requested it. The tenants provided in evidence the email correspondence discussing the details of the move-out inspection. The tenants emailed the landlord on December 28, 2016 asking the landlord if she was available on December 30, 2016 "for a walk through", and that they had to leave around 1:00 p.m. The tenants requested to leave the keys in the mailbox, and the landlord replied "the mail box is fine, I should be back to town by 3 pm". The tenants moved out on December 30, 2016. The landlord performed a move-out inspection on December 31, 2016 in the absence of the tenants, and on January 13, 2017, the tenants received a copy of the report plus a partial refund of their deposits. The tenants testified that no move-in inspection was performed at the beginning of the tenancy. The tenants included a copy of the Condition Inspection Report in their evidence. The tenants requested a monetary order in the amount of \$1,939.03, which is double the value of their deposit plus \$100.00 for recovery of the filing fee, minus the \$960.97 returned to them.

The landlord testified in this hearing that the tenants had moved out before the end of the fixed-term tenancy, without permission from the landlord to do so. The landlord was able to find a new tenant for January 1, 2017, with monthly rent set at \$1,450.00. The landlord testified that she had spent the entire day of January 1, 2017 cleaning as the tenants did not properly clean the rental suite, and she had a difficult time finding an available professional cleaner. The landlord did not dispute the fact that she had retained a portion of the tenants' security and pet damage deposit, \$439.03, nor did she dispute the fact that she had completed the move-out inspection in the absence of the tenants. The landlord submitted in written evidence her response to the tenants stating that \$270.00 was retained as compensation for the early end of this tenancy. The

landlord maintained that she had attempted to do a move-out inspection with the tenants, but “it was the tenant who prevented any reasonable scheduling”. The landlord further submitted that the tenants did not properly clean the suite, and \$160.00 was deducted for cleaning, and \$19.03 was deducted for a new furnace filter which the landlord stated was replaced at her own cost once a year, but had to be replaced “ahead of regular service time because the existing filter was full of dog hair”. The landlord stated that she had only deducted from the deposits compensation for five hours of work despite the fact it required at least seven to clean the home. The landlord submitted 8 photos in evidence to show the condition of the home upon move-out.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants’ forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants’ security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants’ provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if “at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants.”

In this case, I find that the landlord had not returned the tenants’ security and pet damage deposits in full within 15 days of receipt of the tenants’ forwarding address in writing, which was on December 30, 2016. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants’ security and pet damage deposits. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants’ security and pet damage deposits.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security and pet damage deposits less the \$960.97 previously returned to the tenants.

As the tenants were successful in their application, I find that they are entitled to recover the filing fee for their application.

**Conclusion**

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the portion of the security and pet damage deposits retained by the landlord, plus a monetary award equivalent to the value of their security and pet damage deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Return of the Security and Pet Damage Deposits retained by landlord (\$1,400.00 - \$960.97 = \$439.03)	\$439.03
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,400.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,939.03</b>

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: June 9, 2017

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**Residential Tenancy Branch**