



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNSD, FF

### Introduction

On April 21, 2017, the Tenants submitted an Application for Dispute Resolution for the Landlord to return of all or part of the security deposit, and to recover the filing fee for the Application.

The Tenant Ms. F.C. and the Landlord's agents Ms. S.T. and Ms. E.B. attended the hearing. The hearing process was explained and the parties were asked if they had any questions. Both parties provided affirmed testimony and 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 Tenants applied for the return of the security deposit. The parties testified that a deposit of \$347.50 was paid to the Landlord. The Tenant's application indicates a claim of \$342.50. The Tenant asked to amend her application to be \$347.50 and the Landlord did not object. The Application is amended to be \$347.50.

### Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced on December 1, 2016, and ended on March 31, 2017. Rent in the amount of \$685.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$347.50.

The Tenant testified that the Landlords did not return the security deposit after the Tenants moved out of the rental unit and provided their forwarding address.

The Tenant testified that there was no written agreement reached that the Landlord could retain any amount of the security deposit.

The Tenant testified that the Tenants provided the Landlord with their forwarding address on two occasions. The Tenant testified that their address was provided to the Landlord via telephone and later via email on April 21, 2017. The Tenant provided documentary evidence of an email sent to the Landlord on April 21, 2017.

In response, the Landlord testified that the tenancy agreement contains a liquidated damages clause in the amount of \$347.50. Ms. S.T. testified that the rental property was also designated as drug free housing and she alleged that the Tenants were smoking marijuana on the property.

The Landlord submitted that they did not return the deposit to the Tenants due to the early end of the tenancy, and the liquidated damages.

The Landlord denied ever receiving a phone call; however, the Landlord's agent Ms. E.B. confirmed that the Landlord received the Tenant's forwarding address via email.

### Analysis

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.

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

I find that the Tenants provided their forwarding address to the Landlord on April 21, 2017, which is the same day the Tenants applied for dispute resolution.

Since the Landlord was not given an opportunity to return the deposit or apply to retain the security deposit, I decline to award the Tenants double the amount of the security deposit in accordance with section 38 of the Act.

I find that there was no agreement reached by the parties that the Landlord could retain the security deposit.

I find that the Landlord was required under section 38 of the Act to return deposit within 15 days of receiving the Tenants' forwarding address. I order the Landlord to pay the Tenants the security deposit of \$347.50.

I grant the Tenants a monetary order in the amount of \$347.50. 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.

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.

### Conclusion

The Landlord failed to return the security deposit to the Tenants in accordance with the legislation.

The Tenants are granted the return of the security deposit. I grant the Tenants a monetary order in the amount of \$447.50.

As there is no Application before me from the Landlord, I am unable to hear the Landlord's claims for compensation. The Landlord is at liberty to apply for dispute resolution should the Landlord wish to proceed with a claim.

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: September 21, 2017

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Residential Tenancy Branch