



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for loss or other money owed. Specifically, the Tenants sought the return of all or a portion of their security deposit.

The hearing was convened by telephone conference call and was attended by the Tenant S.W. (the “Tenant”), her assistant (the “Assistant”), and the Landlord; all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

### Preliminary Matters

#### **Preliminary Matter #1**

The Landlord requested that the Tenant’s evidence be excluded from consideration in the hearing as it was not received by her until April 19, 2018, which is not in accordance with the timelines provided in the Rules of Procedure. She also stated that she did not have sufficient time to consider and respond to this evidence. The Tenant acknowledged that she did not send the evidence to the Landlord until April 18, 2018, as she did not understand she needed to send it earlier.

The Landlord stated that due to the fact that the Tenants did not provide her with their evidence at least two weeks prior to the hearing, she was also forced to submit her own evidence without reference to or knowledge of the Tenants' evidence in order to comply with the timeline requirements for respondents in the Rules of Procedure.

Section 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied upon in the hearing must be received by the respondent and the Residential Tenancy Branch (the "Branch") not less than 14 days before the hearing. The Tenant, who is the Applicant, acknowledged that they did not send their evidence to the Landlord until April 18, 2018, and the Landlord testified that it was not received until April 19, 2018. The ability to know the case against you and to prepare evidence in your defense is fundamental to the dispute resolution process and the Landlord argued that the Tenant's failure to provide evidence to her in accordance with the Rules of Procedure prevented her from both fully understanding the Tenants' claim and properly preparing evidence in her defense. Based on the above, I find that it would be fundamentally unfair and a breach of both the Rules of Procedure and the principles of natural justice to accept the Tenant's late evidence for consideration in the hearing and I therefore exclude it from consideration in this matter.

### **Preliminary Matter #2**

The Landlord testified that she sent her evidence to the Tenants on April 13, 2018, by registered mail and provided me with a copy of the registered mail receipt and the registered mail tracking number. In the hearing the Tenant acknowledged receipt of the evidence package on April 18, 2018, however, she disputed that a copy of the condition inspection report was contained in this package and requested that it therefore be excluded from consideration.

The Landlord acknowledged that a copy of the fully completed move-in and move-out condition inspection report was only provided to the Tenants in her evidence package sent on April 13, 2018, and although the Tenant disputed receiving this form, she acknowledged receiving all the other evidence from the Landlord that was included in this package. Based on the documentary evidence and testimony before me, and on a balance of probabilities, I find it more likely than not that the Landlord included the condition inspection report with her evidence. As a result, I have accepted this evidence for consideration in this matter.

### Issue(s) to be Decided

Are the Tenant's entitled to the return of all or a portion of their security deposit?

### Background and Evidence

The parties agreed that the tenancy began on June 1, 2015, and that a security deposit in the amount of \$1,350.00 was paid. Both parties also agreed that the Tenants received \$390.00 from the security deposit at the end of the tenancy and that Landlord was allowed to retain \$200.00 from the security deposit for cleaning. However, the Tenant argued that the Landlord did not have permission to deduct the additional \$735.00 in repair and painting costs and that the \$390.00 returned to them was received more than 15 days after the date the tenancy ended, which is also the date they provided their forwarding address to the Landlord in writing.

The Landlord stated that the Tenant agreed that she could deduct painting and repair costs from the security deposit but admitted that no price was agreed upon as she needed to obtain the quote. The Landlord pointed to several photographs showing a screw in the wall and of two small tape marks, the bill for \$735.00 for painting and repair services completed at the end of the tenancy, and text messages between her and the Tenant regarding the cleaning, repairs and painting.

The Tenant and her Assistant stated that there was never any agreement that the Tenants would pay for painting and repairs and although the Tenant acknowledged being told by the Landlord that some of the walls needed repairs and paint, she stated that she disagreed with the Landlord that these repairs were needed as the walls were in good condition. While both parties agreed that one of the Tenants was present at both the move-in condition inspection and the move-out condition-inspection, there was a dispute between the parties about whether the Landlord had completed the condition inspection report and provided it to the Tenants as require.

### Analysis

Section 38(1) of the *Act* states that except as provided in subsection (3) or (4) (a), 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, as provided in subsection (8), 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.

Sections 38(3) and 38(4) of the *Act* state that a landlord may retain from a security deposit or a pet damage deposit:

- an amount that the director has previously ordered the tenant to pay, and at the end of the tenancy remains unpaid; and
- an amount agreed to in writing by the tenant for a liability or obligation of the tenant.

As both parties agree that the Landlord was entitled to deduct \$200.00 from the security deposit for cleaning costs, I accept that the Landlord was entitled to deduct this amount. Although the Landlord testified that the Tenants agreed to the deductions for painting and repairs, the Tenant denied this. The Landlord provided a copy of a text message to the Tenant stating that as per their agreement, she would deduct cleaning, painting, and repair costs from the security deposit. However, there is no evidence before me that the Tenant responded in agreement and I find that this text message is simply a statement from the Landlord to the Tenant, not an agreement between them. As a result, I find that there was no agreement between the parties at the end of the tenancy for the Landlord to retain \$735.00 from the security deposit for painting and repairs. The Landlord was therefore not entitled to deduct these costs from the security deposit.

Both parties agreed that the Tenants vacated the rental property and provided their forwarding address to the Landlord in writing on September 1, 2017. Both parties also agreed that one of the Tenants was present for each condition inspection. As a result, I find that the Tenants did not extinguish their rights to the return of the security deposit.

Based on the above, I find that the Landlord was therefore obligated to either return the remaining balance of the security deposit, \$1,150.00, to the Tenants or file a claim against it with the Branch by September 16, 2017. Although the parties agreed that \$390.00 was returned to the Tenants, the Tenant testified that it was not received until September 22, 2017, and the Landlord failed to provide documentary evidence or testimony to satisfy me, on a balance of probabilities, that it was returned to the Tenants by September 16, 2018. Further to this, there is no evidence before me that the Landlord has filed a claim against the Tenants' security deposit. As a result, I find that the Landlord breached section 38(1) of the *Act* when she failed to return the \$1,150.00 to the Tenants or file a claim against it by September 16, 2017.

Section 38(6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit,

or both, as applicable. As a result, I find that the Landlord has extinguished her right to claim against the security deposit and pursuant to section 67 of the *Act*, the Tenants are entitled to a Monetary Order in the amount of \$1,910.00; double the \$1,150.00 balance of the security deposit owed to them after the \$200.00 deduction, less the \$390.00 already received.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$1,910.00. The Tenants are provided with this Order in the above terms and the Landlord must be served with **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: May 8, 2018

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Residential Tenancy Branch