



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### 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 the security deposit pursuant to Section 38; and
- Authorization to recover the tenants' filing fee for this application from the landlord pursuant to Section 72

The landlord and the tenants attended the hearing and were given full opportunity to be heard, to present evidence, and to make submissions.

The tenant SC testified for the tenants. Neither party called any witnesses.

The tenant testified that the application for dispute resolution dated September 29, 2017 and all evidentiary materials were served on the landlord by registered mail. The tenant submitted no evidence as to the date of service such as a dated Canada Post tracking number. The landlord stated he had received the notice and materials prior to the hearing by ordinary mail on or about April 20, 2018. Despite late service by a method not authorized by the *Act*, the landlord testified he was nevertheless prepared to proceed with the hearing. Pursuant to sections 88, 89 and 90 of the *Act*, I find the landlords was deemed served on April 20, 2018.

As a preliminary matter, the parties agreed to amend the documents in the proceeding to add the name "Gareth Croft" as one of the tenants.

Issue(s) to be Decided

- Are the tenants entitled to a monetary award in the amount of the security deposit, or any portion thereof, because of the landlord's failure to comply with the provisions of section 38 of the Act?
- Are the tenants entitled to recover the filing fee of this application from the landlord?

Background and Evidence

The parties agree as follows. The landlord and the tenants entered into a residential tenancy agreement beginning September 1, 2016 ending August 31, 2017 when the tenants moved out. The monthly rent of \$2800 was payable on the first of each month. A security deposit in the amount of \$1400 was paid. A Condition Inspection Report was completed when the tenants moved in.

On August 29, 2017, the tenant SC, on behalf of all the tenants, signed a letter authorizing an agent AW as follows: "to be the representative for sighting the end of lease walkabout [address] on behalf of [names of all tenants]." This letter was provided to the landlord and the agent AW conducted the move-out inspection on behalf of all the tenants on August 31, 2018.

Page 2 and 3 of the Condition Inspection Report dated August 31, 2018 was submitted by the landlord. Page 2 contains the following:

*I, AW, agree that this report fairly represents the condition of the rental unit."*

An illegible signature appears below. The landlord provided uncontradicted evidence the signature was that of the agent AW.

Page 3 of the submitted Condition Inspection Report is titled "SECURITY/PET DAMAGE DEPOSIT STATEMENT" and states in part as follows:

Amount of Security Deposit	1400
Total	1400
Deduct from Security Deposit	782.50
BALANCE DUE TENANT	717.50
BALANCE DUE LANDLORD	782.50

In handwriting near the figure "717.50", is the following: "pd chq 399".

Below appears the following:

*I agree with the amounts noted above and authorize deductions noted above from my Security and/or Pet Damage Deposit. ...*

This is followed by the same illegible signature as on page 2. The landlord provided uncontradicted evidence the signature was that of the agent AW.

The tenants acknowledged receipt of the amount of \$717.50 from the landlord as a partial return of their security deposit.

The tenants state the landlord had no reason to withhold any security deposit and the agent should not have agreed to any deduction. They request the return of the balance of the security deposit.

#### Analysis

The tenants testified that AW was the authorized agent of the tenants for the purposes of representing them in the move-out report as set out in the letter of August 29, 2017. Therefore, in the absence of any evidence to the contrary, the tenants are bound by the actions of their agent AW which took place within the scope of his authority. The landlord is entitled to rely upon the letter and to assume the agent AW has authority to make decisions for the tenants with respect to the move-out report and the return of the security deposit.

The Residential Tenancy Policy Guideline # 26 acknowledges the role of agents. It states in part as follows:

#### **Agents**

*An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlords and as such may have evidence to present at the hearing. A tenant may appoint any trusted person as their agent.*

I find that the agent AW had authority to act for the tenants and the tenants are bound by the agent's decisions made within the scope of his authority. The tenants are not entitled to the return of the remainder of the security deposit.

Conclusion

The tenants' application is dismissed without leave to reapply.

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 02, 2018

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Residential Tenancy Branch