



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking the return of their security deposit, a monetary order for money owed pursuant to section 51(1) of the *Act*, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant C.S. and the agent for the Landlord (the “Agent”), both 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. Neither party raised any concerns regarding the service of documentary evidence.

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.

### Issue(s) to be Decided

Are the Tenants entitled to the return of their security deposit pursuant to section 38 of the *Act*?

Are the Tenants entitled to compensation pursuant to section 51(1) of the *Act*?

Are the Tenants entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2014, at a monthly rent amount of \$1,200.00 and that rent at the end of the tenancy was \$1,244.40. The parties also agreed that a security deposit in the amount of \$600.00 was paid at the start of the tenancy.

The parties agreed that a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") was served on the Tenants personally on August 31, 2017. The Two Month Notice in the documentary evidence before me, dated August 31, 2017, has an effective vacancy date of November 1, 2017, and states that the reason for ending the tenancy is because the rental unit will be occupied by the landlord or the landlord's close family member. There was also agreement between the parties that no compensation has been provided to the Tenants in relation to the Two Month Notice.

While neither party was certain as to whether a move-in condition inspection was done, they acknowledged that in any event, a report was not completed. Both parties agreed that written notice to end the tenancy early effective September 30, 2017, was personally served on the Agent between September 15, 2017 -September 18, 2017, and that the tenancy ended on September 30, 2018, when the Tenants moved out. Although the Agent stated that she did not recall receiving the Tenants' forwarding address, the Tenant testified that their forwarding address was sent to the Agent in writing on October 13, 2017, and a text message in the documentary evidence before me, dated October 14, 2017, shows the Agent acknowledging receipt of the Tenant's forwarding address. The Text message also states that the security deposit will be available for return the following day.

The parties agreed that a move-out condition inspection was done on September 30, 2018, but a report was never completed, signed, or given to the Tenants. The Agent testified that a verbal agreement was reached at the end of the tenancy to deduct \$25.00 from the security deposit for the cleaning of one bathroom. In addition to this, the Agent stated that there was an agreement that the Tenants were responsible for the costs of replacing a mirror but that the specific cost was not discussed as it was not known at the time. The Agent stated that the cost for replacing the mirror was \$300.00 and as a result, \$325.00 was deducted from the security deposit; \$25.00 for cleaning and \$300.00 for the mirror. The Agent stated that the balance of \$275.00 was mailed to the Tenants mid-October and a text message from the Agent to the Tenants dated October 23, 2018, states that the security deposit

cheque was previously mailed to the Tenants at their forwarding address and to contact her if it was not received by October 24, 2017.

The Tenant disputed this testimony stating that they never received or cashed this cheque and that there was never any agreement, verbal or otherwise, for the Landlord or Agent to deduct any amount from the security deposit. When asked, the Agent confirmed that the cheque in the amount of \$275.00 was never cashed and was subsequently cancelled. No documentary evidence was submitted in support of the Agent's testimony that the cheque was written, mailed, or cancelled.

As a result of the above, the Tenants sought the return of their security deposit in addition to \$1,244.40 in compensation owed to them pursuant to section 51(1) of the *Act*.

### Analysis

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Both parties agreed that the Tenants were served with a Two Month Notice, that rent was \$1,244.40 at the time the Two Month Notice was served, and that no compensation was provided to the Tenants pursuant to section 51(1) of the *Act*. Based on the above, I find that the Tenants are therefore entitled to compensation in the amount of \$1,244.40.

Having made the above finding, I will now turn my mind to the issue of the return of the Tenants' security deposit. Although a landlord is entitled to collect a security deposit from a tenant at the start of a tenancy, this amount is not the property of the landlord and is actually held in trust throughout the tenancy. A landlord may only withhold or deduct from the security deposit as allowable under the *Act*.

Section 38(1) of the *Act* states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit to the tenant with interest calculated in accordance with the regulations, less any allowable deductions under the *Act*, or make an application claiming against it. Although the Agent stated that she did not recall receiving the Tenants' forwarding address, the Tenant testified that it was provided to the Agent in writing on October 13, 2017, and provided a copy of a text messages from

the Agent confirming receipt of the forwarding address and stating that the security deposit cheque had been mailed. As a result, and on a balance of probabilities, I find that the Tenants provided their forwarding address to the Agent on October 13, 2017. Based on the above, I find that the Landlord had until October 28, 2017, to either return to the Tenants, any portion of the security deposit owed to them, or to file a claim against it.

There is no evidence before me that the Landlord or the Agent filed an application with the Residential Tenancy Branch (the "Branch") claiming against the security deposit and while the Agent testified that there was a verbal agreement to retain some funds from the security deposit at the end of the tenancy, she acknowledged that there was nothing in writing to this effect. The Tenant also denied that any deductions from the security deposit were agreed upon. As a result, I find that the Landlord did not have authority to deduct the \$325.00 from the Tenants' security deposit at the end of the tenancy pursuant to section 38(4) of the *Act*.

Section 38(6) of the *Act* states that if a landlord does not comply with section 38(1) of the *Act*, they must pay the tenant double the amount of the deposit. As the amount of the security deposit paid by the Tenants was \$600.00 and the interest calculator shows that no interest is owed, I find that the Tenants are entitled to double the amount of their security deposit, \$1,200.00, less any amount already reimbursed. Although the Agent testified that \$275.00 of the security deposit was mailed to the Tenants near the beginning of October, neither the exact date of mailing nor any proof of this return was provided. Further to this, the Agent acknowledged that the cheque was never cashed and was subsequently cancelled. As a result, I find that the Landlord never returned any portion of the security deposit to the Tenants. Based on the above, I therefore find that the Tenants are entitled to \$1,200.00 pursuant to section 38(1) of the *Act* as the Landlord had no authority to retain any portion of the security deposit and failed to either return it in full to the Tenants or claim against it within 15 days after the date they received the Tenants' forwarding address in writing.

As the Tenants were successful in their Application, I also find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. Based on the above, the Tenants are therefore entitled to a monetary order in the amount of \$2,544.40.00

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$2,544.40. 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: June 5, 2018

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Residential Tenancy Branch