



# 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 tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38 and authorization to recover the filing fee for this application pursuant to section 72.

Both parties (1 tenant and 2 landlords) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlords confirmed receipt of the tenant's Application for Dispute Resolution by registered mail as well as his 3 pages of evidence. The landlords did not submit any evidence for this hearing.

### Issue(s) to be Decided

Is the tenant entitled to recover \$100.00 unreturned by the landlords from his security deposit? Is the tenant entitled to an amount equivalent to his security deposit for the landlords' contravention of the *Act*? Is the tenant entitled to recover the \$100.00 filing fee from the landlords?

### Background and Evidence

This tenancy began approximately 2 years ago. Neither party was able to remember the exact date of the start of the tenancy nor there was no written tenancy agreement created for this tenancy. The parties agreed that the tenant paid a \$425.00 security deposit paid by the tenant at the outset of this tenancy sometime during 2015. The tenant vacated the rental unit on October 7, 2017 after the landlords advised him that he was required to vacate the unit because the landlords intended to sell the rental unit. The parties did not testify as to whether a 2 Month Notice to End Tenancy for Landlord's Use was issued or whether the tenant was compensated in accordance with a 2 Month Notice.

On the day of the tenant's move-out from the rental unit, the parties agree that a walkthrough condition inspection was done. The landlords did not complete a condition inspection report at move-out and had not created a condition inspection report at move-in. The parties agreed that the rental unit had been newly renovated when the tenant moved into the unit two years prior. The tenant testified that the landlords regularly inspected the rental unit and throughout the final months of the tenancy, he prepared the rental unit for showing (for sale of the unit). The landlords submitted that the tenant did not leave the rental unit in the condition it was in at the start of the tenancy, after renovations. The landlords did not apply to retain all or a portion of the tenant's security deposit.

The tenant testified that he did not agree, in writing or otherwise, that the landlords were entitled to keep a portion of his security deposit. Landlord KE argued that the tenant accepted a cheque from her on the date of move-out in an amount lesser than his total security deposit (\$325.00) and that this was proof of the tenant's agreement to the reduced amount in the return of his security deposit. The tenant testified that he did not feel he was able to negotiate or discuss the matter of his security deposit further at the move out date and filed an application for dispute resolution shortly thereafter.

Landlord NP testified that the tenant did not keep the unit in good, clean condition during his tenancy. Landlord KE testified that that, while the tenant did not keep the unit clean during the tenancy, she was limited in what steps she could take during the course of the tenancy. Both landlords testified that, at move-out, the tenant had not cleaned the unit sufficiently. Landlord NP said that the stove was dirty and Landlord KE said the counters were dirty. Each landlord testified that the tenant was given options at the walk through: clean the rental unit further or accept a deduction in his security deposit amount. Landlord KE testified that the tenant was also given an opportunity to return to clean the unit further later. Landlord NP did not provide the same testimony: he testified that the tenant had been unhappy that the landlords had decided to sell the rental unit, which he had to undergo several showings of the unit and that, by the move-out walk through inspection, the tenant had a "very bad attitude" and called his wife names.

The tenant testified that he cleaned the rental unit extensively and that he had been forced to keep the rental unit clean during the tenancy as the landlords inspected the unit for cleanliness regularly. He testified that he did not leave any damage or dirt that was beyond the scope of normal wear and tear. Neither the tenant nor the landlords provided photographs of the rental unit. The landlord took photographs of the unit that

were taken in the final two months of the tenancy in order to sell the unit however they were not submitted for this hearing. The tenant argued that the landlords could have submitted those photographs as evidence. The tenant also argued that the landlords had an unreasonable standard for the condition of the unit at move-out.

### Analysis

For the benefit of the parties, the standard for inspection at the end of tenancy is not the exact condition on move-in but takes into consideration factors including but not limited to reasonable length of a residential tenancy and the age of the rental unit. A portion of Residential Tenancy Policy Guideline No. 1, with respect to the responsibility of each party to the premises reads,

*The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act...*

At the end of a tenancy, section 37 of the Act requires the tenant to leave the rental unit “reasonably clean, and undamaged except for reasonable wear and tear, and... give the landlord all the keys or other means of access ...” In these circumstances, if the landlord were entitled to retain some of the damage (if they had filed an application and presented evidence of damage that they were able to prove) that damage would have to be proved to be beyond normal wear and tear for a two year tenancy in a renovated rental unit in a 36 year old building.

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 tenant’s forwarding address in writing, to either return the security deposit in full 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 tenant’s security deposit plus any applicable interest and must pay the tenant 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 tenant’s provision of the forwarding address. In this case, the landlords acknowledged receipt of a letter from the tenant with his forwarding address shortly after the end of this tenancy. The landlords were unable to identify the date that they received the tenant’s forwarding address. The tenant submitted a copy of the letter

provided his forwarding address and provided undisputed testimony that the forwarding address was sent by mail on October 12, 2017: he also provided the mailing information to prove that a letter was mailed to the landlords on that date. I find that the landlords were informed of the forwarding address in writing by October 17, 2017 (5 days after it was mailed to the landlords) and therefore the landlords had 15 days after October 17, 2017 to take one of the actions outlined above. The landlords did not apply to retain the tenant's security deposit or any portion of the deposit.

Section 38(4) (a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." [emphasis added] The tenant testified that he did not agree in writing to allow the landlords to retain any portion of his security deposit. I accept his testimony that he felt he had no choice but to accept the cheque given by the landlords at that time. I find, contrary to the testimony of the landlords that the tenant's acceptance of the partial payment in the return of his security deposit does not amount to agreement to the reduction. As there is no documentary evidence that the tenant gave the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply.

The tenant sought the return of his security deposit. The landlords did not apply to the Residential Tenancy Branch to retain the tenant's deposit (or a portion of the tenant's deposit). In these circumstances, I find that the tenant is entitled to a monetary order including \$100.00 for the return of the remainder of his security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*

- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

I accept the evidence of the tenant at this hearing that he did not agree to the retention of a portion of his security deposit (regardless of the acceptance of the landlord's cheque in a lesser amount). I also accept the evidence of the tenant that the rental unit was clean and tidy at the end of the tenancy. While the landlords disagreed that the tenant left the unit in satisfactory condition, they did not provide any evidence to counter the tenant's claim by way of photographs or a condition inspection report (which is often the best evidence in these circumstances and which is required by the Act). I refer the parties to Part 3 of the Residential Tenancy Regulation where the requirements with respect to a condition inspection report are provided.

The landlords did not file their own application to retain a portion of the tenant's security deposit in the timeline allowed under the Act (15 days) or at any date prior to this hearing. The landlords did not create a residential tenancy agreement or a condition inspection report and, as a result, had no objective evidence to support their position regarding the condition of the rental unit. There was also no written agreement by the tenant acknowledging and permitting the retention of a portion of his security deposit.

The tenant did not specifically waive his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his original security deposit (\$425.00) with any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Original security deposit amount	\$425.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$425.00

Amount returned by the landlords	-325.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$625.00</b>

The tenant is 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 07, 2018

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Residential Tenancy Branch