



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            FFT, MNDCT, MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenants for a monetary order for return of the security deposit paid to the landlord, utilities costs, and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act").

Only the tenants appeared at the hearing. The tenants provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The tenants testified and supplied documentary evidence that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on April 26, 2018 and was signed for and accepted by a "CF" on April 27, 2018; with the surname being the same as the landlords. The tenants provided tracking information from Canada Post indicating the mail had been signed for on April 27, 2018. I find the landlord has been duly served in accordance with section 89 of the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Are the tenants entitled to a portion or all of their security deposit?

Are the tenants entitled to a monetary order?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background, Evidence

**The tenant's undisputed testimony is as follows.** The tenancy began on August 1, 2015 and ended on July 31, 2016. The tenants were obligated to pay \$5500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2750.00 security deposit. Written condition inspection reports were conducted at move in and move out by the landlords' agent. The tenants testified that they provided their forwarding address on July 30, 2018 in writing to the landlord and his agent. The tenants are seeking the return of double their deposits \$2750.00 x 2 + \$5500.00 plus an overpayment of \$152.00 for utilities when they no longer lived in the unit as well they are seeking the recovery of the \$100.00 filing fee. The tenants testified that they seek the above amount minus \$145.00 that they agreed to pay for cleaning.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenants, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 38 of the Act addresses the issue before me as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

Based on the undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double their deposit in the amount of \$5500.00. The tenants have provided supporting documentation that they had overpaid \$152.00 for utilities after their tenancy had already ended; accordingly I find that the tenants are entitled to \$152.00

The tenants are also entitled to the recovery of the \$100.00 filing fee.

I have found that the tenants are entitled to \$5752.00. The tenants testified that \$145.00 should be deducted from any amount I find for them as they had agreed to pay for the cleaning of the suite, accordingly; I find that the final total the tenants are entitled to is \$5607.00.

#### Conclusion

The tenants have established a claim for \$5607.00. I grant the tenants an order under section 67 for the balance due of \$5607.00. This order may be filed in the Small Claims 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: October 29, 2018

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Residential Tenancy Branch