



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call. The tenant testified that the landlord was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) at the landlord's address by registered mail on September 28, 2018 along with all evidence provided for this hearing. The tenant has provided a copy of a Canada Post cash register receipt bearing that date and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

### Background and Evidence

The tenant testified that this fixed term tenancy began on April 1, 2017 which expired on September 30, 2017 thereafter reverting to a month-to-month tenancy which ultimately ended on May 31, 2018. Rent in the amount of \$1,450.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$725.00 and no pet damage

deposit was collected. The rental unit is a basement suite and the landlord resided in the upper level of the home.

A copy of an unsigned tenancy agreement with an Addendum has been provided as evidence for this hearing. The tenant further testified that when the tenants moved in, the landlord had emailed the tenancy agreement to the tenants, and the tenant printed and signed it but never received back a copy signed by the landlord.

The tenant has also provided copies of text messages exchanged between the parties, and testified that the co-tenant, who did not attend this hearing, received half of the security deposit from the landlord, but the other half has not been received. The landlord's text messaging indicates that it was not being returned due to the tenant's bad attitude. The other half has not been returned to either tenant, and the landlord has not served the tenants with an Application for Dispute Resolution claiming against the security deposit.

The tenant has provided the landlord with his current address in this Application for Dispute Resolution.

The tenant claims the remaining \$362.50 and recovery of the \$100.00 filing fee.

### Analysis

The *Residential Tenancy Act* states that a landlord must repay a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord does neither, the landlord must repay the tenant(s) double the amount. If the tenant does not provide a forwarding address within one year from the date the tenancy ends, the landlord does not have to return the security deposit.

A security deposit is not apportioned by law, meaning that the entire deposit belongs to both tenants, not half to each. In this case, the landlord was served with the tenants' Application for Dispute Resolution which contains the tenants' forwarding address, but has only returned half of the security deposit. Providing a forwarding address in an Application for Dispute Resolution does not satisfy the requirement of a tenant to give the landlord a forwarding address in writing. Therefore, I dismiss the tenants' application with leave to reapply. The tenant(s) must provide a forwarding address in writing to the landlord, and if the landlord fails to comply with the *Act*, the tenants will be at liberty to apply for double the amount, less the amount returned to the co-tenant.

Since the tenants have not been successful with the application the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed with 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: January 22, 2019

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Residential Tenancy Branch