



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for the return of the security deposit and pet damage deposit and for the recovery of the filing fee paid for this application.

Both Tenants were present for the teleconference hearing, along with a legal advocate (collectively the “Tenants”). A second legal advocate was present who was listening for training purposes but did not participate in the call. The Landlord was also present for the duration of the teleconference hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenants confirmed receipt of a copy of the Landlord’s evidence package. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Are the Tenants entitled to monetary compensation?

Are the Tenants entitled to the return of the security deposit and pet damage deposit?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on March 1, 2016. Monthly rent at the start of the tenancy was \$800.00, due on the first day of each month. The monthly rent was raised twice during the tenancy and was \$900.00 at the end of the tenancy. A security deposit of \$400.00 and a pet damage deposit of \$400.00 were paid at the outset of the tenancy. The parties confirmed that the Landlord is still in possession of the full deposit amounts. The parties also agreed that a \$300.00 deposit had been paid for the appliances, which has also not yet been returned.

The Tenant stated that they moved out of the rental unit on July 30, 2018, while the Landlord stated that the tenancy ended on August 1, 2018.

The Tenants testified that they provided their forwarding address on August 3, 2018 through a letter to the Landlord. The letter, dated August 3, 2018, was submitted into evidence and requests the return of \$1,100.00; \$800.00 for the security and pet damage deposits and \$300.00 for the return of the deposit paid for appliances.

The letter provides a forwarding address and requested that the Landlord return the deposits by e-transfer. An email address was provided for the e-transfer. The Tenants stated that they have not received any amount from the Landlord for the return of the deposits.

The Landlord confirmed receipt of the Tenant's forwarding address on August 3, 2018. The Landlord provided testimony that there were no deductions from the deposits at the end of the tenancy, so he sent the Tenants \$1,100.00 by e-transfer to the same email address that rent was paid throughout the tenancy. The Landlord was unsure of the date when the first e-transfer was sent, but stated that as the money was not accepted, he sent another e-transfer on September 8, 2018. The Landlord submitted an email from his bank dated October 9, 2018 which states that the September 8, 2018 e-transfer

had not been accepted and had therefore expired. The Landlord had noted in the e-transfer message that this was the second attempt to send the funds.

The Tenants stated that they did not receive any notification of an e-transfer from the Landlord. The Tenants stated that they had used the email address that was included on the August 3, 2018 letter to pay rent for a couple of years. The Landlord confirmed that the e-transfer was sent to a different email address that he had for one of the Tenants and not the email provided on the forwarding address letter.

The Landlord stated that the forwarding address provided on the August 3, 2018 letter was incorrect. The Tenants confirmed that the forwarding address provided was a valid mailing address. They later phoned the Landlord to provide the address of their new home. They stated that no money was ever sent to either address provided to the Landlord.

The Tenants applied for the return of the \$300.00 appliance deposit, as well as the return of double the security and pet damage deposits due to not receiving them back within 15 days.

The Tenants also applied for a total of \$829.00 for what they stated were illegal rent increases given during the tenancy. The Tenants stated that the first increase began around March 2017 when their rent was increased from \$800.00 to \$847.00 per month. The Tenants stated that notice of the increase was provided to them through a letter written by the Landlord, but that they had misplaced the letter since then. As they were unsure of the exact date of the first rent increase, they stated that they believe the first increase took effect around March 2017.

The Tenants testified that the second increase raised the rent from \$847.00 to \$900.00. They submitted the rent increase letter into evidence. The letter dated January 15, 2018 states that as of March 1, 2018 the rent would be \$900.00 per month. The Tenants stated that they paid the rent increases as they only recently became aware of the legal rent increase process and the allowable percentage amount.

The Landlord was in agreement that the rent was increased twice during the tenancy. He stated that the Tenants did not dispute the rent increases at the time they were issued and paid the increased amounts. He also stated that the increases were due to increased utility charges and other business expenses on the property.

The Landlord stated that the first rent increase letter was provided to the Tenants on April 25, 2017 to increase the rent on May 1, 2017. This increase was from \$800.00 to \$847.00. He agreed that the second increase took effect on March 1, 2018 and raised the rent to \$900.00 per month.

The Tenants also applied for moving expenses in the amount of \$884.65. They stated that they were evicted through a letter from the Landlord and not through a proper notice to end tenancy. The Tenants submitted the letter from the Landlord dated July 1, 2018. In the letter, the Landlord stated that the Tenants were not meeting their agreement to help around the residential property and that it would be best if they found another place to live. In the letter the Landlord notes that he will provide more than a month if needed. There is no effective end of tenancy date stated in the letter.

The Tenants stated that there was no agreement for them to help the Landlord with his property. They stated that they accepted the letter as they did not think they had the ability to dispute it and they moved out on July 30, 2018. The Tenants submitted the invoice from a moving company dated July 30, 2018 in the amount of \$884.65.

### Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

Regarding the Tenants' claim for the return of their security and pet damage deposit, I refer to Section 38(1) of the *Act* which states the following:

38 (1) 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.

The parties agreed that the tenancy ended sometime between July 30, 2018 and August 1, 2018. The parties also agreed that the Tenant's forwarding address was provided to the Landlord in writing on August 3, 2018.

While the Landlord stated that he sent two e-transfers to the Tenants, both of which were not accepted, there is only documentary evidence confirming the e-transfer that was sent on September 8, 2018. The Landlord also stated that the e-transfers were not sent to the email address provided by the Tenants on their August 3, 2018 letter.

The only documentary evidence before me regarding the Landlord's attempts to return the deposits is the evidence showing that an e-transfer was sent on September 8, 2018. Returning the deposits on September 8, 2018 is more than 15 days past the receipt of the Tenants' forwarding address on August 3, 2018. The e-transfer was also not accepted by the Tenants as it was not sent to the email address noted on the August 3, 2018 letter. However, although the Landlord attempted to return the deposits on September 8, 2018, I find that this was not in compliance with Section 38(1) of the *Act*.

Section 38(6) of the *Act* states the following:

- (6) 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.

Therefore, based on the evidence before me that establishes the receipt of the forwarding address on August 3, 2018 and the Landlord's attempt to return the deposits on September 8, 2018 to an incorrect email address, I find that Section 38(6) applies, and the Tenants are entitled to the return of double the security deposit and double the pet damage deposit for a total of \$1,600.00.

Although the parties agreed that an additional \$300.00 was paid for an appliance deposit, I do not find that this deposit falls under Section 38 of the *Act*. However, I accept the testimony and evidence of both parties that this was paid, and that the Landlord intended to return it by including this amount in the \$1,100.00 e-transfer attempt. In accordance with Section 67 of the *Act*, I find that the Tenants are entitled to the return of the \$300.00 appliance deposit.

Regarding the Tenants' claim for the recovery of illegal rent increases, I refer to Section 42(3) of the *Act* which states that a notice of rent increase must be in the approved form. The Tenants submitted the second increase letter into evidence and the Landlord provided testimony as to both rent increase letters. The testimony and evidence confirmed that these were letters from the Landlord and not the Notice of Rent Increase form from the Residential Tenancy Branch as required by Section 42(3) of the *Act*.

Section 43(1) of the *Act* states the following:

- 43 (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3),
  - or
  - (c) agreed to by the tenant in writing.

I find that the Landlord was not in compliance with Section 43 of the *Act* as the rent increase amount was not calculated based on the allowable percentages at the time. I also do not find evidence before me that the Tenants agreed *in writing* to the rent increases. I note that Section 41 of the *Act* states that a landlord must not increase rent except in accordance with the *Act*. Accordingly, I find that the rent increases provided were not in compliance with the *Act*.

Both parties have responsibilities and rights under the *Act* and should be aware of what these are. As such, the Tenants did not have to accept or pay the rent increases based on the letters from the Landlord. However, although the Tenants accepted the rent increases and paid the increased amount stated in the Landlord's letters, I find that they applied for the return of the increased amount as soon as they became aware of the legal rent increase process under the *Act*. I find that the Tenants have established their claim for the return of the amount paid for the illegal rent increases.

I accept the testimony of the Landlord that the first increase took effect on May 1, 2017 and increased the rent from \$800.00 to \$847.00. Therefore, I find that the Tenants are owed \$47.00 a month for the 15-month period from May 1, 2017 until the end of the tenancy in July 2018 for a total of \$705.00.

The rent increase letter submitted into evidence by the Tenants confirms that the Landlord increased the rent again on March 1, 2018 at which point it was increased from \$847.00 to \$900.00. As this was \$53.00 more than the Tenants were previously paying, I find that they are owed \$53.00 per month from March 1, 2018 until the end of tenancy in July 2018, for a total of \$265.00.

The Tenants also applied for compensation for moving costs in the amount of \$884.65. I find that the Landlord did not provide notice to end the tenancy in accordance with the *Act*, in particular Section 52 of the *Act* which outlines the form and content requirements of a notice to end tenancy.

However, upon review of the letter, I also do not find it to be clear that the Landlord was ending the tenancy. The letter states that it would be best for the Tenants to find a new place to live but does not state the effective end of tenancy date. However, the Tenants accepted the letter and moved out at the end of that same month.

As I find that the tenancy was not ended through the Landlord's letter dated July 1, 2018, I find that the Tenants voluntarily moved out after receipt of this letter. As such, I do not find that the Tenants have established their claim regarding compensation for moving costs and I decline to award the Tenants any compensation for moving.

As the Tenants were mostly successful in their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Tenants are granted a Monetary Order in the amount outlined below:

Return of security deposit	\$400.00
Amount to double security deposit	\$400.00
Return of pet damage deposit	\$400.00
Amount to double pet damage deposit	\$400.00
Return of appliance deposit	\$300.00
Return of \$47.00 rent increase from May 1, 2017 to July 2018	\$705.00
Return of \$53.00 rent increase from March 2018 to July 2018	\$265.00
Return of filing fee	\$100.00
<b>Total owing to Tenants</b>	<b>\$2,970.00</b>

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$2,970.00** as outlined above. 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: January 28, 2019

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Residential Tenancy Branch