



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the Tenants' adjourned Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenant applied for the return of their security deposit. The matter was set for a conference call.

Both the Landlord, his Property Manager (the "Landlord") and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all evidence and testimony before me that met the requirements of the 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

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of her security deposit?

### Background and Evidence

Both parties agreed that the tenancy began on January 22, 2017, as a month to month tenancy. Rent in the amount of \$1,400.00 was to be paid by the twenty-second day of each month, and that the Tenants had paid the Landlord a \$700.00 security deposit and a \$700.00 pet damage deposit (the deposits). It was also agreed that the Tenants moved out of the rental unit on July 29, 2018 and had provided the Landlord with their forwarding address.

The Landlord testified that he had not returned the deposits to the Tenants as they had not attended the move-out inspection of the rental unit after he had attempted several times to schedule it with the Tenants. The Landlord testified that pursuant to section 36 of the *Act*, the Tenants had extinguished their right to the return of the deposits as they had not participated in the move-out inspection.

The Landlord testified that attended the rental unit on two separate occasions to conduct the move-out inspection with the Tenants, but they did not show up for the scheduled inspection. The Landlord read a series of text messages between himself and Tenants, which he testified showed his attempts to schedule the move out inspection. When asked, if the Landlord had issued the final written request to schedule the move-out inspection, the Landlord testified that he had not issued the final written request. The Landlord submitted a one-page written statement, from himself, into documentary evidence.

The Tenant testified that they had attempted to schedule the move out inspection with the Landlord several times, via text message but that the Landlord had offered only 11:00 a.m. or 1:00 p.m. as the times available to conduct the inspection. The Tenants testified that the times offered were when they were at work and that when they requested a time later in the day, when they would be off work, the Landlord refused.

The Landlord testified that he could not recall the exact times that he had offered to the Tenants for the move-out inspection, but that there had been at least one opportunity at 11:00 a.m. and another at 1:00 p.m. The Landlord also confirmed that he had turned down the Tenants' request to conduct the move-out inspection after 4:00 p.m. as he was not available at that time. The Landlord testified that the Tenants had agreed to the times he had offered but that they did not show up at the scheduled times.

The Landlord also testified that he had informed the Tenants of the reasons why he would be keeping the deposits, explaining that the damage to the rental unit cost more to repair than the deposits that he was holding. The Landlord testified that as of the date

of this hearing he had not filed an Application for Dispute Resolution claiming against the deposits for this tenancy.

The Tenants testified that they feel that they had not damaged the rental unit and that they had attempted to attend the move-out inspection, but that since the Landlord had only offered a time when he knew they could not attend, it was not their fault. The Tenants testified that at no time had the Landlord been given written permission to keep the deposits.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that the Landlord and the Tenants attempted to schedule the move-out inspection several times, between July 22 to 30, 2018.

Section 17 of the Residential Tenancy Regulations (the “Regulations”) states the following:

#### **Two opportunities for inspection**

*17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

*(2) If the tenant is not available at a time offered under subsection (1),*

*(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*

***(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.***

*(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

I also accept the Landlord's testimony that he did not make a final written attempt to schedule the move-out inspection, as required. I find that the Landlord did not follow the Regulations, section 17 (2b) when he did not provide the Tenants with a second opportunity to schedule the move-out inspection in the approved form.

Additional, accept the agreed upon testimony of these parties that the times offered to conduct the move-out inspection at been during the regular working hours of the Tenants. I find that it was a reasonable request, by the Tenants, that the move-out inspection is scheduled for a time outside of a Tenants' regular working hours. Consequently, I find that the Landlord did not follow the Regulations, section 17(3) when he only offered times to conduct the move-out inspection during the Tenants' regular working hours.

For the reasons stated above, I find that the Tenants have not extinguish their right to the return of their deposits for this tenancy.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

**Return of security deposit and pet damage deposit**

**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.

I accept the agreed upon testimony of these parties, and find that this tenancy ended on July 29, 2018, the date the Tenant moved out of the rental unit and provided their forward address to the Landlord. Accordingly, the Landlord had until August 14, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenants

or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

#### **Return of security deposit and pet damage deposit**

- 38 (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, I find that pursuant to section 38(6) of the *Act* the Tenants have successfully proven that they are entitled to the return of double their deposits. I find for the Tenants, in the amount of \$2,800.00, granting a monetary order for the return of double the security deposit and pet damage deposit.

#### **Conclusion**

I find that the Landlord breached section 38 of the *Act* when he failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$2,800.00**. 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: February 26, 2019

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Residential Tenancy Branch