



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both tenants, the landlord, and the landlord's agent appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that on October 16, 2018, the landlord was served, by way of Registered Mail, the Tenants' Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the tenants' evidence.

The landlord confirmed receipt of the dispute resolution package and the tenants' evidence. Therefore, I find that the landlord was served with the dispute resolution hearing package and the tenants' evidence in accordance with the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit? If so, should it be doubled?

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

### Background and Evidence

While I have considered all documentary evidence submitted and all oral testimony of the parties, I will only refer to the evidence and facts which I find relevant in this decision. Not all details of the respective submissions and / or arguments of the parties are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The parties agreed to the following facts. The parties agreed that the tenancy began on July 01, 2018, and that a security deposit of \$500.00 was provided to the landlord and continues to be held by the landlord. The monthly rent was set at \$1,000.00, and was payable on the first day of each month. Neither party provided a copy of a written tenancy agreement as evidence. The parties agreed that a written tenancy agreement was signed at the start of the tenancy.

The parties agreed that a condition inspection was conducted at the start of the tenancy, with both parties in attendance. The parties agreed that a condition inspection report was not completed subsequent to the condition inspection at the start of the tenancy. The parties agreed that the condition of the rental unit was only verbally referenced.

The parties agreed that a condition inspection was not conducted at the end of the tenancy, after the tenants had vacated the rental unit.

The parties agreed that the landlord issued to the tenants a One Month Notice to End Tenancy for Cause (the One Month Notice) on September 13, 2018 by hand. The tenants acknowledged receipt of the One Month Notice on September 13, 2018.

The tenants testified that they vacated the rental unit on October 31, 2018, as they believed that was the effective date of the One Month Notice and that they would be required to vacate the rental unit on that date. The tenants testified that the end of tenancy date, and the date on which they vacated the rental unit was the same, October 31, 2018.

The tenants testified that after vacating the rental unit on October 31, 2018, they returned all means of access to the rental unit by returning the keys to the rental unit.

The tenants testified that they provided their forwarding address in writing to the landlord on October 14, 2018. The tenants testified that they wrote their forwarding

address on paper, along with a request to have the landlord return their security deposit in full, which they sent to the landlord by way of registered mail. The landlord testified to confirm receipt of the tenants' forwarding address on October 23, 2018. The tenants provided a copy of the written request as evidence.

The tenants testified that they have not received the return of their security deposit, and that since the 15-day period within which the landlord is to return the deposit after receiving the tenant's forwarding address, or after the end of the tenancy, had passed, the tenants request that the landlord be ordered to pay an amount equivalent to double the amount of the security deposit. Therefore, the tenants seek that the landlord be ordered to pay the sum of \$1,000.00, which represents double the amount of the security deposit of \$500.00.

The landlord testified that after he received the tenants' forwarding address in writing on October 23, 2018, and after the tenancy ended on October 31, 2018, the landlord did not have any consent in writing from the tenants which permitted him to retain the deposit. The landlord testified that he continues to hold the entire amount of the deposit and has not made an Application for Dispute Resolution in order to retain the deposit.

The landlord testified that after the tenancy had ended, the tenants did not clean the rental unit. The landlord testified that he incurred a cost to have the rental unit cleaned. The landlord testified that the tenants owe an amount for unpaid utility charges. The tenants denied this portion of the landlord's testimony.

### Analysis

The parties provided affirmed testimony that the tenancy ended after the tenants vacated the rental unit on October 31, 2018, pursuant to a One Month Notice issued by the landlord. Therefore, I find that the tenancy ended on October 31, 2018.

Based on the testimony provided by the parties, I find that the landlord confirmed receipt of the tenants' written forwarding address on October 23, 2018, along with the tenants' request to have the landlord return the deposit in full. I find that the landlord did not have the tenants' written consent to retain any portion of the security deposit, as the landlord provided affirmed testimony to convey this fact.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the

security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) of the Act requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 15 days after the *later* of the end of a tenancy, or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit and/or the pet damage deposit. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that a move-in condition inspection report was not completed in accordance with section 23 of the Act. I also find that a condition inspection was not completed at the end of the tenancy in accordance with section 35 of the Act. Therefore, I find the landlord extinguished his rights in relation to the security deposit under sections 24 and 36 of the Act. I find that the rights of the tenants' to seek return of their deposit has not been extinguished pursuant to the provisions of Residential Tenancy Policy Guideline 17, which states, in part, the following:

*In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.*

Although the tenants did not participate in a condition inspection at the end of the tenancy, I find that the landlord breached his obligation first by not completing a condition inspection report at the start of the tenancy in accordance with section 23 of the Act. Additionally, the landlord did not offer the tenants an opportunity to attend a condition inspection at the end of the tenancy in accordance with section 35 of the Act. Therefore, I find the tenants did not extinguish their rights in relation to the security deposit under sections 24 and 36 of the Act.

The landlord did not adhere to the requirements of section 38(1) of the Act, as the landlord did not return the security deposit, in the amount of \$500.00, as requested by the tenants, within 15 days of October 31, 2018, which is the later of the dates as stated in sections 38(1)(a) and 38(1)(b) of the Act.

No evidence was produced at the hearing that the landlord applied for dispute resolution claiming against the security deposit within 15 days following the conclusion of the tenancy on October 31, 2018.

If the landlord had concerns arising from the purported cleaning costs that arose as a result of the landlord's assertion that the tenants did not clean the rental unit after they vacated the unit, the landlord should have applied for dispute resolution to retain the security deposit if the landlord determined that he had cause to do so.

Although the landlord testified that he incurred a cost to clean the unit and that unpaid utility charges remained outstanding, it is inconsequential if the landlord suffered a loss as a result of these items, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit and pet damage deposit as recourse for loss.

No evidence was produced at the hearing that the landlord received the tenants' written authorization to retain all, or a portion of the security deposit, to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the Act, nor did the landlord receive an order from an Arbitrator enabling him to do so.

Pursuant to section 38(6)(b) of the Act, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the Act. I find that the landlord failed to adhere to section 38 of the Act. The tenants are therefore entitled to a monetary award in the amount of \$1,000.00, representing a doubling of the tenants' unreturned security deposit (\$500.00 x 2).

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,100.00 against the landlord, calculated as follows:

Item	Amount
Doubling of unreturned Security Deposit (\$500.00 x 2)	\$1,000.00
Recovery of Filing Fee	100.00
<b>Total Monetary Award to Tenant</b>	<b>\$1,100.00</b>

The tenants are provided with a Monetary 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: March 01, 2019

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Residential Tenancy Branch