



# 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 for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants and the Landlord were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that he did not receive any evidence from the Tenants. The Landlord did not submit any evidence prior to the hearing. The Tenant confirmed that they did not serve a copy of their documentary evidence to the Landlord.

As a copy of the Tenants’ evidence was not served to the Landlord as required by the *Residential Tenancy Branch Rules of Procedure*, the Tenants’ evidence is not accepted and will not be considered in this decision. This decision will be based on the verbal testimony of both parties.

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.

### Issues to be Decided

Are the Tenants entitled to the return of the security deposit?

Are the Tenants entitled to monetary compensation?

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. The tenancy began on July 1, 2014 and ended on September 30, 2018. Monthly rent at the end of the tenancy was \$1,475.00. A security deposit of \$700.00 was paid at the outset of the tenancy and the Landlord is still in possession of the full security deposit amount.

The Tenant testified that no move-in or move-out inspection was completed. He stated that they received a Two Month Notice to End Tenancy for Landlord's Use of Property and on September 12, 2018 provided notice to end the tenancy early, on September 30, 2018. The Tenant stated that they provided their forwarding address on this same letter, dated September 12, 2018. The Tenant testified that they received a text message from the Landlord the following day confirming receipt of the letter.

The Tenant stated that they did not agree to any deductions from their security deposit and that they have not received any amount of the deposit back. The Tenants applied for the return of the security deposit in the amount of \$700.00, as well as monetary compensation in the amount of \$700.00, which the Tenant stated is the amount to double the deposit due to not receiving the deposit back within the required 15 days.

The Landlord testified that he received the Tenants' forwarding address on September 12, 2018. He stated that he conducted a walk-through of the rental unit at the start of the tenancy but was not sure if this was put into writing or signed by the parties. The Landlord further testified that a walk-through was also done at the end of the tenancy with the Tenants but stated that nothing was put into writing or signed. He stated that he offered to return half of the deposit to the Tenants, but they declined. The Landlord confirmed that the Tenants did not agree to any deductions from their security deposit in writing.

The Landlord stated that he retained the security deposit due to damage to the rental unit caused by the Tenants and/or their dog.

### Analysis

Section 38(1) of the *Act* 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.

I accept the testimony of both parties that the tenancy ended on September 30, 2018 and that the Tenants' forwarding address was provided in writing on September 12, 2018. Therefore, I find that the Landlord had 15 days from September 30, 2018 to comply with Section 38(1) of the *Act* as stated above. The parties agreed that the Landlord has not returned any amount from the security deposit and I have no evidence before me that the Landlord filed an Application for Dispute Resolution.

I also note that a landlord may retain from a security deposit an amount unpaid from a previous order, an amount that the tenant agreed to in writing or an amount that the director orders the landlord to retain, as stated in Sections 38(3) and 38(4) of the *Act*.

However, based on the testimony of both parties, I find that the Tenants did not provide permission in writing for the Landlord to retain an amount from their security deposit. I also find no evidence that the Landlord had the right to retain the security deposit due to an order from a previous dispute resolution proceeding. A security deposit is held in trust for the tenant by the landlord and may not be kept unless the landlord has the right to do so under the *Act*.

As such, I find that the Landlord did not comply with Section 38(1) and therefore find that Section 38(6) applies:

- (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.

Accordingly, I find that the Tenant has established that they are entitled to the return of double the security deposit in the amount of \$1,400.00.

As the Tenants were 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 awarded a Monetary Order for a total of \$1,500.00

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,500.00** for the return of double the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution. 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: March 13, 2019

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Residential Tenancy Branch