



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT, MNSD

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary order for compensation for loss or damage under the *Act*, regulations or tenancy agreement?

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

### Background and Evidence

The tenants gave the following testimony. The tenancy began on May 1, 2018 and ended on December 31, 2018. The tenants were obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. BG testified that written condition inspection reports were not conducted at move in or move out. BG testified that their original tenancy agreement included cablevision as part of the rent. BG testified that when the present owners took possession of the property in August 2018 they took away the cable without notice or a rent reduction.

BG testified that they seek four and half months' worth of cable cost of \$720.00 as compensation. BG testified that the previous owners returned their security deposit. BG testified that she and her husband paid a new deposit of \$500.00 to the landlords and entered into a new verbal tenancy agreement on August 19, 2019. BG testified that their forwarding address was sent to the landlords on January 4, 2019 by registered mail. BG testified that the deposit has not been returned and seek the doubling provision under the Act. RG testified that the landlords made no attempts to conduct a condition inspection report with him.

The tenants are applying for the following:

1.	Double the Security deposit	\$1000.00
2.	Loss of Cable Compensation	720.00
3.	Filing Fee	100.00
4.		
5.		
6.		
	Total	<b>\$1820.00</b>

The landlords gave the following testimony. SF testified that the tenants did not provide a copy of the previous tenancy agreement until they filed for this hearing. SF testified that the tenants gave insufficient notice to end the tenancy, left the unit dirty and damaged and that they should not be entitled to the return of the security deposit. SF testified that when they entered into the verbal agreement both parties were fully aware that cablevision was not included. IF testified that the tenants knew where to find him to conduct the move out inspection but chose not to. IF testified that he has not returned the deposit, has not filed an application to retain the deposit and that he does not have an order from an Arbitrator allowing him to keep the deposit.

## Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

### Cablevision \$720.00

The tenants submit that they had a tenancy agreement that included cablevision with the previous owners. The tenants testified that the agreement from the previous owner should be "grandfathered" in and that they should be compensated for the loss of service for four and half months for a claim of \$720.00. The landlords disputed this claim and submit that they entered into a new agreement with the tenants when they took possession of the property and that they only saw the previous tenancy agreement when they were served the documents for this hearing.

Section 12 of the Act addresses the issue before me as follows:

### **Tenancy agreements include the standard terms**

- 12** The standard terms are terms of every tenancy agreement
- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
  - (b) **whether or not the tenancy agreement is in writing.**

Both parties confirmed that they entered into a new verbal tenancy agreement on August 19, 2018 and that the terms did not include cablevision. This new agreement is reflected in the tenants own documentation that illustrates a new deposit was paid to the new owners. Based on the parties testimony and the tenants own documentation I find that the parties entered into a new agreement on August 19, 2018 and that cablevision was not included in that agreement, accordingly; I dismiss this portion of the tenants application.

### Security Deposit \$1000.000

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

The landlords gave sworn testimony and confirmed that they have not filed for dispute resolution or returned the deposit as stated above, I must award the tenants the return of double the security deposit. The tenants are entitled to  $\$500.00 \times 2 = \$1000.00$ .

As the tenants have been partially successful in their application, they are entitled to the recovery of the \$100.00 filing fee.

**Conclusion**

The tenants have established a claim for \$1100.00. I grant the tenants an order under section 67 for the balance due of \$1100.00. This order may be filed in the Small Claims 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: May 27, 2019

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Residential Tenancy Branch