



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

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

Both Tenants were present for the teleconference hearing as was the Landlord and a family member who was interpreting for the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord submitted evidence to the Residential Tenancy Branch but confirmed that a copy of this evidence was not served to the Tenants as the Landlord was not aware of this requirement.

As stated by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* evidence from the respondent must be received by the Residential Tenancy Branch and a copy served to the applicants at least seven days prior to the hearing. Although the Landlord’s evidence was received by the Residential Tenancy Branch within the allowable timeframe, it was not served to the Tenants as required. Therefore, the Landlord’s evidence is not accepted and will not be considered as part of this decision. This decision will be based on the verbal testimony of both parties as well as the documentary evidence of the Tenants. The parties were informed on this at the hearing.

All 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 *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 the return of the security 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 by the Tenants. The tenancy began on June 25, 2018. Monthly rent was \$2,500.00 and a security deposit of \$1,250.00 was paid at the outset of the tenancy. The parties agreed that the Tenants moved out on February 24, 2019.

The Tenants provided testimony that they have not received any amount of their security deposit back and that they did not provide permission for any amount to be retained. They have applied for \$2,500.00 which is the equivalent of double the security deposit due to not receiving it back within the allowable timeframe.

The Tenants stated that no move-in inspection was completed and that at move-out only a walk-through was done with nothing put into writing. They stated that they provided their forwarding address on January 23, 2019 with their notice to end the tenancy. A copy of the letter dated January 23, 2019 was submitted into evidence and includes the Tenants' forwarding address.

The Tenants stated that when moving out they requested their security deposit back but that they were told by the Landlord that he would be keeping it.

The Landlord confirmed receipt of the Tenants' notice to vacate and their forwarding address in writing on January 23, 2019. They stated that they did a walk-through at move-in and move-out but confirmed that this was not done in writing. The Landlord stated their position that they were able to keep the security deposit due to the damage to the rental unit. They stated that this is what the deposit is for and they had permission

through the signed tenancy agreement. The Landlord agreed that they did not return any amount of the security deposit and stated that due to the poor condition of the rental unit at the end of the tenancy they lost a month of rent as it took time to clean up and repair the unit. Therefore, they stated that they kept the security deposit to cover some of these costs.

### Analysis

Regarding the Tenants' claim for the return of the security 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.

I accept the testimony of both parties that the Tenants' forwarding address was provided in writing on January 23, 2019 and that the tenancy ended on February 24, 2019. Therefore, I find that the Landlord had 15 days from February 24, 2019 to return the deposit or file a claim against it. I also note that as stated in Section 38(4), a landlord may retain an amount from the deposit that the tenant has agreed to in writing.

I find no evidence before me that the Tenants agreed in writing to any deductions from their security deposit. Despite the Landlord stating that they were entitled to keep the security deposit, I do not find this to be the case. A security deposit is held in trust for the tenants and may not be retained simply because the landlord believes they are entitled to do so. A security deposit may only be retained in accordance with Section 38 of the *Act*. I do not find that the Landlord had the right to retain the security deposit pursuant to Section 38 of the *Act*.

As stated, I find that the Landlord did not comply with Section 38(1) as they did not return the deposit or file a claim against the deposit within 15 days. Therefore, I find that Section 38(6) of the *Act* applies as follows:

- (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 Tenants are entitled to the return of double their security deposit in the amount of \$2,500.00. As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00 for a total monetary award of \$2,600.00.

### Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$2,600.00** 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: July 05, 2019

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Residential Tenancy Branch