



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEVEL DESIGN and  
tenant name suppressed to protect privacy]

## **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 the security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The co-tenant DS (the "tenant") attended on behalf of both named applicants. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

The parties agreed on the following facts. This tenancy ended on March 31, 2019. A security deposit of \$1,250.00 was paid at the start of the tenancy. No condition inspection report was prepared at any time for this tenancy.

The parties agree that the tenants provided a forwarding address to the landlord sometime in April, 2019. The tenants gave authorization that the landlord may retain \$85.00 of the security deposit. The landlord returned \$465.00 of the security deposit to the tenants on May 11, 2019. There is a balance of \$700.00 which the landlord retains and the tenants have not authorized to be deducted from their deposit.

The landlord submits that the rental unit was left in a condition requiring cleaning, remediation and work to be done and the amount of \$700.00 is being withheld for those reasons. The landlord submitted into evidence copies of receipts for work and photographs of the condition of the suite.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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 must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on March 21, 2019 and the tenants provided a forwarding address sometime in April 2019. I accept that the tenants gave authorization that the landlord may retain \$85.00 of the security deposit and \$465.00 has been returned by the landlord. I accept the evidence that there is a balance of \$700.00 which the landlord has not returned to the tenants nor have they filed an application for dispute resolution for authorization to retain the deposit.

The landlord made reference to the condition of the rental unit and submitted evidence regarding their costs but I find this to be irrelevant. The landlord has not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct anything more than \$85.00.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover their losses from the security deposit they ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold any portion of the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return \$700.00 of the

security deposit for this tenancy to the tenants without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if he does not comply with the requirements of section 23 in completing a condition inspection report in accordance with the regulations.

A landlord is in the business of taking payment for providing rental units and must do so in accordance with the applicable rules and legislation. The landlord submits in their materials that they have been acting as landlord for a number of years. As such, I find that the landlord ought to have known that they cannot unilaterally withhold the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days of the tenancy ending. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,400.00 Monetary Order, double the \$700.00 portion of the security deposit held by the landlord without authorization. No interest is payable over this period.

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

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,500.00 against the landlord, allowing them to recover double the amount of the portion of the security deposit retained by the landlord and the filing fee.

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: September 27, 2019

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Residential Tenancy Branch