



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FFT

### Introduction

On June 19, 2019, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit; for a money owed or compensation for damage or loss; and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenant, Mr. G.B. and the Landlord Ms. V.H. attended the hearing. The hearing process was explained and the parties were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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?
- Are the Tenants entitled to money owed or compensation for damage or loss?

### Background and Evidence

The Landlords and Tenants testified that the tenancy began on March 1, 2014 as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,560.00 was due by the first day of each month. The Tenants paid the

Landlord a security deposit of \$700.00. The Tenant testified that they were fully moved out of the rental unit by May 29, 2019.

The Tenant testified that the Landlords did not return the security deposit to them after the tenancy ended.

The Tenant testified that they provided their forwarding address in writing to the Landlord in a letter dated May 31, 2019.

The Tenant testified that there was no written agreement that the Landlords could retain any amount of the security deposit or pet damage deposit.

The Tenant testified that the Landlord said she was keeping the deposit due to costs for cleaning and repairs.

The Tenant testified that the Landlord issued them a Notice of Rent Increase in September 2018, that provided for a rent increase of \$60.00 per month effective January 2019. The Tenant testified that the increase of \$60.00 is more than the \$37.50 permitted under the Act. The Tenant testified that they paid the \$60.00 increase for five months and are seeking to recover the over payment of \$22.50 each month. The Tenant is seeking compensation in the amount of \$112.50.

In reply to the Tenants' claim, the Landlord testified that she has not returned the security deposit of \$700.00 to the Tenants. She testified that there was a verbal agreement permitting her to automatically deduct costs for utility bills from the security deposit.

The Landlord testified that she did receive the Tenants' forwarding address in writing. She testified that she kept the full security deposit due to unpaid utility bills and cleaning costs.

The Landlord testified that she did issue the Tents a Notice of Rent increase in September 2018. The Landlord testified that she made a mistake by increasing the rent by an additional \$60.00 rather than the amount permitted of \$37.50.

### Analysis

Section 5 of the Act provides that Landlords and Tenants may not avoid or contract out of this Act or the regulations.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a Landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenants provided their forwarding address to the Landlords on May 31, 2019. The Landlord acknowledged that she received the Tenants' forwarding address in writing. There is no evidence before me that the Landlords applied for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no written agreement from the Tenants that the Landlords could retain the security deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit. I order the Landlords to pay the Tenants the amount of \$1,400.00.

I find that the Landlord issued a Notice of Rent Increase for an amount above the 2.5 % increase permitted by the Act. I find that the Tenants are entitled to recover an overpayment of \$22.50 per month for five months. I award the Tenants the amount of \$112.50.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$1,612.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

### Conclusion

The Landlords failed to return the security deposit to the Tenants or make a claim against it in accordance with section 38 of the Act. The Tenants are granted double the amount of the security deposit.

The Landlord issued an illegal rent increase and must repay an overpayment of rent in the amount of \$112.50.

I grant the Tenants a monetary order in the amount of \$1,612.50.

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: October 04, 2019

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Residential Tenancy Branch