



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, FFT

### Introduction

On July 22, 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, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlords and Tenants attended the hearing. The Landlords were assisted by legal counsel. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The parties confirmed that they had exchanged the documentary evidence that I have before 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.

### Issue to be Decided

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

### Background and Evidence

The Landlords and Tenants testified that the tenancy began on July 10, 2019, as a fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,800.00 was due to be paid to the Landlords by the first day of each month. The Tenants paid a security deposit of \$1,400.00 to the Landlords. The parties testified that the tenancy ended on June 30, 2019.

The Tenants testified that the Landlords did not return the security deposit to them within 15 days following the end of the tenancy.

The Tenants testified that they provided the Landlord with their forwarding address in writing on June 1, 2019. The Tenants provided a copy of a letter dated June 1, 2019 that contains their forwarding address.

The Tenant testified that there was no written agreement reached at the end of the tenancy permitting the Landlords to retain an amount of the security deposit.

In reply, the Landlords counsel submitted that on June 30, 2019, the Tenants agreed that the Landlord could withhold the amount of \$200.00 due to damage to a shower door. The Landlord issued a cheque to the Tenants in the amount of \$1,200.00. The Landlords submitted that after a more thorough inspection and discovered that the rental unit was left unclean. The Landlords asked the Tenants to return the cheque and when the Tenants did not, the Landlords put a stop payment on the \$1,200.00 cheque.

The Landlords acknowledged that they received the Tenants forwarding address in writing. The Landlords acknowledged that they did not make a claim against the deposit within 15 days.

The Tenants acknowledged that at the end of the tenancy they agreed that the Landlord could keep \$200.00 towards damage to the shower. The Tenants are still in agreement that the Landlord can keep the \$200.00 amount.

### Analysis

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 or pet damage 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 June 1, 2019. The Landlords did not apply for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that other than an oral agreement that the Landlord could retain \$200.00 there was no written agreement that the Landlords could retain an amount from 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.

Residential Tenancy Policy Guideline #17 Security Deposit and Setoff provides the following example for how a security deposit may be doubled when an amount has been deducted from the deposit:

*During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy.*

I find that the Landlord is authorized to keep the \$200.00 for the damage to the shower. The Landlords are holding a security deposit of \$1,200.00. I order the Landlords to pay the Tenants the amount of \$2,400.00.

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

I grant the Tenants a monetary order in the amount of \$2,500.00. 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 a \$1,200.00 security deposit to the Tenants in accordance with the legislation.

The Tenants are granted a monetary order in the amount of \$2,500.00 for double the amount of the security deposit and the cost of the filing fee.

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: November 05, 2019

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Residential Tenancy Branch