



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFT

### Introduction

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

- A return of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord").

The landlord confirmed receipt of the tenant's application and evidence. Based on the testimonies I find that the landlord was served with the tenants' materials in accordance with sections 88 and 89 of the Act.

The tenant testified that they had not been served with any materials from the landlord. The landlord was uncertain if and how the landlord's evidence was served. While I find there is insufficient evidence that the landlord served the tenants with their materials or at all, I find that the inclusion of the landlord's evidence does not unreasonably prejudice the tenants or result in a breach of the principles of natural justice. Therefore, in accordance with the principles of Residential Tenancy Rule of Procedure 3.17 and section 71 of the Act, I find that the evidence is sufficiently served and allow its inclusion in the present hearing.

### Issue(s) to be Decided

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

Are the tenants entitled to a return of the filing fees from the landlord?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in May 2014 and ended August 1, 2019. The tenants paid a security deposit of \$650.00 at the start of the tenancy. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenants provided their forwarding address in writing to the landlord on August 15, 2019. The landlord has not returned any portion of the security deposit.

The landlord submits that there was damage in the rental unit and submitted a number of invoices for various work. The landlord confirmed that they were not provided written authorization by the tenants to retain any amount of the security deposit nor have they filed an application to retain the deposit.

### 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 August 1, 2019 and the tenants gave the landlord the forwarding address in writing on August 15, 2019. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*.

The landlord made reference to damage in the rental unit 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 any portion of the security deposit.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover his 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 the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit for this tenancy to the tenants without the tenants' 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 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report. While the landlord gave some testimony that they were unable to arrange an inspection due to the tenants' schedule, they have not provided cogent evidence that they provided at least 2 opportunities as required under the *Act*. I find that the landlord has failed to provide the opportunities for the tenants to participate in a condition inspection during the tenancy and have extinguished their right to claim against the deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. I accept the tenants' 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 tenants are entitled to an \$1,300.00 Monetary Order, double the value of the security deposit paid for this tenancy. 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 \$1,400.00 against the landlord. 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: January 13, 2020

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Residential Tenancy Branch