



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on July 5, 2020 seeking an order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process.

This participatory hearing was convened after an adjudicator of this officer determined the correct information about the tenants’ contact information – post-tenancy – was not in place to proceed by a direct request proceeding. The adjudicator informed the tenants of this on July 16, 2020. This generated a Notice of Hearing sent to the Applicant tenants. The tenants then informed the landlord of this hearing and served their evidence via registered mail.

The landlord prepared documentary evidence in advance of the hearing and likewise forwarded that information to the tenants via registered mail.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on November 9, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

The parties both confirmed receipt of the other’s evidence. They were able to speak to all points raised by the other in this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing. The tenant confirmed the details of the agreement. Both parties signed the agreement on May 18, 2019 for the tenancy starting on that date. The monthly rent was \$1,400 per month and the tenants initially paid a security deposit amount of \$700.

The tenancy ended on May 31, 2020. Prior to this both parties signed a 'Mutual Agreement to End a Tenancy' on May 28, 2020. A specific term on the agreement states: "It is also understood and agreed that this agreement is in accordance with the [Act] which states: "The landlord and tenant agree in writing to end the tenancy" & "return damage deposit."

The landlord presented that they undertook an inspection of the unit on the final move-out day; however, the tenants described this meeting differently. The tenants did not enter at the time of the meeting, with police present. The landlord provided that there was no 'Condition Inspection Report' prepared neither at the start of the tenancy nor the end.

The landlord presented their evidence in the hearing. This shows they paid an amount for grass maintenance (\$250) and landscaping (\$229.95). They stated they retained the security deposit for these purposes. Moreover, they did not advise the tenants they were keeping part of the security deposit, due to illness. The landlord also testified they did not file a claim for dispute resolution to retain any part of the security deposit.

The tenants, in their submissions, verified the amount of the security deposit, and reiterated the specific clause provided in the Mutual Agreement to End a Tenancy.

The tenants provided an email dated June 1, 2020. This shows the common email address used by the tenants, as well as that used by the landlord. This was the primary method of email communication used by the parties throughout the tenancy. The email gives the forwarding address "for the full \$700 damage deposit." The tenants also

stated: "We do not agree to any deductions of the damage deposit as the rental was in better condition than we received it."

### Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the tenant provided their forwarding address to the landlords on June 1, 2020. The evidence for this is the tenants' email evidence showing the landlord received their note with the forwarding address. The landlord in the hearing did not provide evidence that is contrary to this piece of evidence in any way.

I find as fact that the tenants moved out of the unit on May 31, 2020 as stated in the agreement and verified by both parties in the hearing. The email stands as evidence of the tenants providing a forwarding address to the landlord on the following day.

I find the evidence shows the landlord received the tenants' forwarding address information on June 1, 2020 and did not subsequently make a claim to retain the deposit within the legislated timeframe of 15 days. In the hearing, the landlord verified that they did not make a claim. In sum, I find the landlord retained the deposit for damages they discovered after the tenancy ended. It is clear from the evidence that the landlord intended to keep the deposit to offset costs of damages discovered after the move out. When provided with the tenants' address information, the landlord had the opportunity to register a claim to retain that deposit; however, there is no record that they did so.

I find the landlord did not return the deposit to the tenant as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlords must pay double the amount of the security deposit. This is \$1,400.

As the tenants were successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of \$1,500. This is double the security deposit and pet deposit amount total of \$700. This includes the amount of \$100.00 for the application filing fee. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 9, 2020

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Residential Tenancy Branch