



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Br Agencies Ltd. and [tenant  
name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNSDS-DR, FFT

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the tenants, 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 their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

KM and TM represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application and evidence package.

### **Preliminary Issue – Service of the Landlord's Evidence**

The tenants testified that they were not served with the landlord's evidence package. The landlord confirmed that the tenants were not served with their evidentiary materials, but testified that the documents that they wished to rely on have been seen by the tenants.

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, the landlord does not dispute that the tenants were not served with their evidence package. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Even though the

landlord's agents testified that the documents have been seen by the tenants, I find the admission of the landlord's evidence would be prejudicial to the applicants as they were not given the opportunity to review the package as submitted, and confirm the contents of the evidence package submitted by the landlord. I find that there would be undue prejudice by admitting the landlord's written evidence. For these reasons, I exercise my discretion to exclude the landlord's written evidentiary materials for this hearing.

The landlord's agents agreed to proceed by way of sworn testimony. The hearing proceeded as scheduled.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of their security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to compensation under section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

Both parties confirmed that this tenancy began on July 1, 2016, and ended on May 31, 2020. Monthly rent, including parking, was \$969.00, payable on the first of every month. The landlord had collected a security deposit in the amount of \$427.50. The tenants moved out, and provided a forwarding address on the move-out inspection report on May 29, 2020.

The tenants testified that they did not receive any portion of their deposit back from the landlord. The tenants are also disputing the amount withheld by the landlord to cover the cost of carpet cleaning. The tenants confirmed that they gave permission for the landlord to retain a portion of their deposit to cover the cleaning and carpet cleaning, but testified that the apartment manager had informed that only \$150.00 would be deducted for the carpet cleaning, not \$200.00.

The landlord's agents testified that as indicated on the signed move-out inspection report the tenants had agreed to the following deductions: \$150.00 for suite cleaning, \$200.00 for carpet cleaning, and a \$200.00 liquidated damages charge that was removed as agreed on by both parties if the tenants removed their items from the parking lot. The landlord's pointed out that the tenants had agreed in writing to these deductions, and the landlord had removed the \$200.00 liquidated damages charge as agreed on. The landlord's agents testified that they had discovered that due to a

typographical error in the transcribing of the tenant's forwarding address, the refund was not received by the tenants despite the fact that they did attempt to mail the tenants their remaining portion of the deposit. The landlord's agents testified that this was an error on their part, but they did follow their usual practice to return the tenants' deposits in a timely manner. The landlord's agents testified that as they did not receive the returned mail, and as the tenants did not follow up, they were not aware of the error until the tenants had filed their application.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In consideration of the tenant's entitlement, I find that the inspection report submitted in the tenants' own evidence shows that they had consented to the following deductions: \$150.00 for suite cleaning, \$200.00 for carpet cleaning, and \$200.00 for liquidated damages. I note that the document is signed by both parties, and dated May 29, 2020. Although in the comment section there is a note that the liquidated damages deduction may be removed on the condition that the tenants remove their items from the parking lot, there is no reference to a lesser amount for carpet cleaning. Based on the evidence before me, I find that the tenants agreed to a \$350.00 deduction from their security deposit to cover the cost of suite and carpet cleaning.

I have considered the testimony of both parties, and I find that it was undisputed that the tenants did provide a forwarding address to the landlord. I also accept the landlord's sworn testimony that they did attempt to return the remaining portion of the tenants' deposit to them, but due to an unintentional error, the refund was not received by the tenants. I accept the landlord's testimony that they did attempt to send the return in a timely manner, and were not aware of their error. I find that the landlord had fulfilled their obligation under section 38 of the *Act* by attempting to return the remaining portion

of tenants' deposit, and accordingly, I dismiss the tenants' application for compensation under the *Act*.

I issue the tenants a monetary order in the amount of \$77.50 for the return of their security deposit less the \$150.00 and \$200.00 deductions agreed upon as indicated on the move-out inspection report.

I allow the tenants to recover the \$100.00 for this application.

### **Conclusion**

I issue a Monetary Order in the tenants' favour as set out in the table below:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit less deductions	\$77.50
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$177.40</b>

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of 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.

I dismiss the tenants' application for compensation under section 38 of the *Act* without leave to reapply

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 6, 2020

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Residential Tenancy Branch