



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT MNSD

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for the return of their security deposit and pet damage deposit balance of \$180.00.

The tenants and the landlord attended the teleconference hearing. All parties were affirmed, and the hearing process was explained to the parties. The parties were provided an opportunity to ask questions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. I find the parties were sufficiently served as a result.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. Any order(s) will be emailed to the appropriate party for service, as necessary, on the other party.

### Issues to be Decided

- Are the tenants entitled to the return of their security deposit and pet damage deposit under the Act?
- If yes, in what amount under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2019. According to the tenancy agreement, the monthly rent was \$1,200s.00 per month and was due on the first day of each month. The parties confirmed that the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 for a total in combined deposits of \$1,200.00 (combined deposits) at the start of the tenancy.

The parties confirmed that the tenants gave the landlord permission to deduct \$142.68 from the combined deposits for hydro and utility costs, leaving a combined deposits balance of \$1,057.32. The landlord testified that they kept another \$180.00 for cleaning costs from the combined deposits and only returned \$877.32 to the tenants.

The tenants testified that their written forwarding address was first provided by email on June 3, 2020; however, that email contained errors in the address. The tenants clarified that on June 14, 2020, a second email was sent to the landlord from the tenants with their written forwarding address without errors. The landlord confirmed that the email was received but that they could not recall the specific day it was received. The landlord confirmed that they have not filed an application to claim against the tenants' security deposit and did not have written permission from the tenants to retain the \$180.00 amount for cleaning costs.

During the hearing, the tenant confirmed they are not waiving their right to double the return of the security deposit or pet damage deposit under the Act. The parties agreed that the tenants vacated the rental unit and returned the keys on May 31, 2020.

### Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find there is no dispute that the tenants vacated the rental unit on May 31, 2020. I also find that the parties reached an agreement for a total deduction of \$142.68 for hydro and utility costs, which I find left a combined deposits balance of \$1,057.32. The landlord then made the decision to retain \$180.00 of the tenants' \$1,057.32 combined deposits balance without permission of the tenants, and without making a claim under the Act against the tenants towards the combined deposits. As a result, sections 38(1) and 38(6) of the Act apply and state:

**Return of security deposit and pet damage deposit**

**38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[Emphasis added]

Based on the above, I find that the landlord received the tenants' written forwarding address on or about June 14, 2020. I also accept that both parties confirmed that the tenants did not give the landlord permission to keep any amount higher than \$142.68 from their combined deposits of \$1,200.00, which left a balance of the combined deposits of \$1,057.32. In addition, the landlord confirmed they have not filed an application to claim against the tenants' combined deposits. Therefore, I find the landlord breached section 38(1) of the Act by failing to return the combined deposits balance of \$1,057.32 in full to the tenants within 15 days of June 14, 2020. Instead, the tenants were given \$877.32 sometime in early June 2020.

As the landlord failed to make a claim against the tenants' combined deposits within 15 days of June 14, 2020, and did not have permission to retain the \$180.00 portion withheld by the landlord, I find the tenant is entitled to the return of **double** the combined deposits balance of \$1,075.32 for a total of \$2,150.64, less the \$877.32 already returned by the landlord, for a total amount of **\$1,273.32**. I note that the tenants' combined deposits accrued \$0.00 in interest since the start of the tenancy. I also note that the landlord did not have a right under the Act to retain the \$180.00 amount withheld from the tenants' combined deposits balance.

As the filing fee was waived, I do not grant the filing fee.

**Monetary Order** – I find that the tenants have established a total monetary claim in the amount of **\$1,237.32**, as described above. I grant the tenants a monetary order pursuant to section 67 of the Act in that amount.

The landlord is cautioned to comply with section 38 of the Act in the future.

### Conclusion

The tenants' application is fully successful and as they have not waived their rights under the Act, I find the tenants have established a total monetary claim of \$1,237.32 as indicated above.

The decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord may be held liable for the costs associated with enforcing the monetary order.

The landlord has been cautioned to comply with section 38 of the Act in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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

---

Residential Tenancy Branch