



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S; MNSDS-DR, FFT

### Introduction

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

- a monetary order for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of their security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the "male tenant" did not attend this hearing, which lasted approximately 18 minutes. The female tenant ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that she had permission to represent the male tenant at this hearing (collectively "tenants").

The hearing began at 1:30 p.m. and ended at 1:48 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in both Notices of Hearings for both parties' applications. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

During the hearing, I informed the tenant that she was not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The tenant affirmed under oath that she did not record this hearing.

I explained the hearing process to the tenant. She had an opportunity to ask questions. She confirmed that she was ready to proceed with the hearing and she did not have any objections. The tenant did not make any adjournment or accommodation requests at this hearing.

The tenant stated that she served the landlord with the tenants' application for dispute resolution hearing package on March 6, 2021, by way of registered mail. The tenants provided a Canada Post receipt and the tenant confirmed the tracking number verbally during the hearing. The tenant claimed that the application package was delivered to the landlord on March 10, 2021. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on March 11, 2021, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the legal name of the landlord company. The tenant consented to this amendment during the hearing. I do not find any prejudice to the landlord in making this amendment.

#### Dismissal of Landlord's Application

The landlord filed its application to retain the tenant's security deposit on January 12, 2021. The tenant stated that she did not receive a copy of the landlord's application for dispute resolution hearing package.

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the landlord, I order the landlord's entire application dismissed without leave to reapply.

#### Issues to be Decided

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

Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on February 1, 2011 and ended on December 31, 2020. Monthly rent in the amount of \$1,076.00 was payable on the first day of each month. A security deposit of \$525.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed with the landlord owner. The landlord company named in both applications is an agent for the landlord owner. Move-in and move-out condition inspection reports were not completed for this tenancy. A forwarding address was provided by the tenants to the landlord, by way of a letter that was sent by registered mail on January 22, 2021 and delivered on January 26, 2021. The tenants provided the letter and a Canada Post receipt, and the tenant confirmed the tracking number verbally during the hearing. The landlord did not have written permission to keep any amount from the tenants' security deposit.

The tenants seek the return of their security deposit of \$525.00, plus the \$100.00 filing fee. During the hearing, the tenant requested double the value of the security deposit.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the undisputed testimony and evidence of the tenant. The tenancy ended on December 31, 2020. The tenants provided a written forwarding address to the landlord on January 22, 2021, by way of a letter, which I find was deemed received by the landlord on January 27, 2021, five days after its registered mailing, as per sections 88 and 90 of the *Act*. The tenants provided a copy of the letter and the Canada Post receipt and tracking number. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full deposit to the tenants.

The landlord filed its application to retain the tenants' deposit on January 12, 2021, which is within 15 days of the end of the tenancy. However, the landlord's right to retain the deposit against damages was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. Further, the landlord did not appear at this hearing to present its application, which was dismissed without leave to reapply, as noted above.

No interest is payable on the tenants' security deposit during the period of this tenancy. I find that the tenants are entitled to receive double the value of their security deposit of \$525.00, totalling \$1,050.00, from the landlord. Although the tenants did not apply for double the amount of their deposit in their application, they did not waive their right to it, so I am required to consider it, as per Residential Tenancy Policy Guideline 17. The tenant also requested double the value of the security deposit during this hearing.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 application filing fee from the landlord.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,150.00 against the landlord. 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: May 14, 2021

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Residential Tenancy Branch