



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD-DR, FFT

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlords served the tenants with their submitted documentary evidence via Canada post Registered Mail on April 19, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$400.00 which consists of the landlord returning only \$780.00 of the \$1,100.00 security deposit. The tenants stated that the landlord had withheld \$300.00 for a damage deduction and the tenants had only agreed to a \$20.00 deduction for a gas bill. The tenants seek return of the \$300.00 withheld by the landlord and recovery of the \$100.00 filing fee.

Both parties confirmed that the tenancy ended on August 31, 2020 and that the tenants had paid a \$1,100.00 security deposit at the start of the tenancy. Both parties confirmed that the tenants provided their forwarding address in writing for return of the security deposit on August 31, 2020. Both parties also confirmed that the tenants again provided their forwarding address in writing later via Canada Post Registered Mail.

The landlords stated that they did not return the tenants' entire security deposit nor did they file an application for dispute of returning it. The landlords stated that they were not aware of the 15 day time limit, but argued that the landlord, A.O. was away and that the tenants had given their verbal consent to hold the security deposit until he returned. The tenants disputed that no such verbal agreement was made.

### Analysis

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

In this case, both parties have confirmed that the tenancy ended on August 31, 2020 and that the landlords withheld a portion of the \$1,100.00 security deposit and had only returned \$780.00. The landlords provided undisputed affirmed testimony that they did not file an application to dispute its return. On this basis, I find that the landlord failed to comply with section 38(1) of the Act and the tenants are entitled to return of the outstanding \$320.00. As per the tenants' application they had agreed to the landlord retaining \$20.00 for a gas bill. The tenants are entitled to return of \$300.00 from the original security deposit withheld by the landlords.

The landlords having failed to comply with subsection 38(1) of the Act is also liable under subsection 38(6) of the Act and the tenants are entitled to compensation to an amount equal to the \$1,100.00 security deposit.

The tenants have established a total monetary claim of \$1,400.00.  
The tenants are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenants are granted a monetary order for \$1,500.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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 28, 2021

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Residential Tenancy Branch