



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL, MNSDS-DR, FFT

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

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

The landlords did not attend or submit any documentary evidence. The tenant, J.G. attended as agent for S.G. (the tenants) via conference call and provided undisputed affirmed testimony.

The tenants 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.

The tenants confirmed receipt of the landlords' notice of hearing package via email on March 8, 2021 but was ready to proceed. The tenants served the landlords with the

notice of hearing package via email on March 14, 2021. The tenants did not provide any proof of service but confirmed in their direct testimony that email/text messages were their primary form of communications. The tenants stated that the landlords were served with the submitted 34 document evidence files via email. I accept the undisputed affirmed testimony of the tenants and find that the landlords were served via email with the notice of hearing package and the submitted documentary evidence. Despite the landlords not attending, I find that the landlords are deemed sufficiently served as per section 90 of the Act. I also find based upon the undisputed affirmed testimony of the tenants that the tenants received the landlord's notice of hearing package via email on March 8, 2021 and are deemed served as per section 90 of the Act.

At the conclusion of the hearing after 35 minutes past the start of the scheduled hearing, the landlord's application for dispute was dismissed without leave to reapply.

#### 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenants seek a monetary claim of \$1,400.00 for return of the \$1,300.00 security deposit and recovery of their \$100.00 filing fee. The tenants argue that the landlords have withheld the security deposit based upon charges made by the landlords which the tenants have not agreed to. The tenants stated that as of the date of this hearing no payments have been received from the landlords for the security deposit.

The tenants provided undisputed affirmed testimony that the tenancy originally began in 2018 and that a \$1,300.00 security deposit was paid to the landlords. During the tenancy a new agreement was made dated October 2, 2019 which began on October 1, 2019 for a fixed term ending on October 1, 2020. The tenants stated that that tenancy then continued on a month-to-month basis with the landlords. The tenants stated that the tenancy ended on January 1, 2021 as a result of a mutual agreement to end tenancy signed and entered into by both parties. The tenants stated that an #RTB-41

form (Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit dated January 12, 2021) was completed by the tenants which details that the landlords were provided with the tenants' forwarding address in writing on January 12, 2021 which was served via Canada Post Registered Mail. Despite no documentary evidence in support of this, the tenants stated that the landlords received the package on January 15, 2021. The tenants referenced several of the documentary evidence submissions in an attempt to locate any supporting evidence of a \$1,300.00 security deposit paid but was unsuccessful. The tenants referred to the application filed by the landlords in which a \$1,300.00 security deposit is sought to be withheld and applied against their monetary claim for damages and unpaid rent.

### 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, I accept the undisputed affirmed testimony of the tenants and find that the tenancy ended as a result of a mutual agreement to end tenancy on January 1, 2021 as shown by the tenants' submitted copy of the agreement dated December 14, 2020.

I also find on a balance of probabilities that the tenants paid a \$1,300.00 security deposit to the landlords in 2018 based upon the tenant's undisputed affirmed testimony in conjunction with the landlords' application for dispute referred to by the tenants in the hearing. A review of that file shows that the landlords are seeking to offset their monetary claim against a \$1,300.00 security deposit paid by the tenants.

I also find on a balance of probabilities that I accept that the tenants provided their forwarding address in writing to the landlords via Canada Post Registered Mail on January 12, 2021 in a completed #RTB-41 form dated January 12, 2021 based upon the undisputed testimony of the tenants that their forwarding address in writing was served to the landlords via Canada Post Registered Mail.

On this basis, I find that the tenants have established a claim for return of the \$1,300.00 security deposit as filed. I also find pursuant to section 38(6) the landlords having failed to make an application pursuant to section 38(1) of the Act or return it within the allowed timeframe. The landlords must pay to the tenants an amount equal to the \$1,300.00

security deposit. I note that despite filing an application for dispute the landlords' application was dismissed without leave to reapply having failed to attend and present evidence of their claim.

The tenants are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlords' application is dismissed without leave to reapply.  
The tenants are granted a monetary order for \$2,700.00.

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: July 12, 2021

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Residential Tenancy Branch