



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on July 27, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit
- A refund of the filing fee paid for this application

Both Tenants attended the hearing. However, the Landlord did not. The Tenants stated that they served the Notice of Hearing, evidence, and application package to the Landlord by registered mail on April 10, 2021. Pursuant to section 90 of the Act, I find the Landlord is deemed to have received this package 5 days after it was mailed, on April 15, 2021.

The Tenants were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenants provided me with a file number during the hearing to show that a hearing was held on June 4, 2021, whereby the Landlord filed an application against the Tenant's security deposit. However, the Landlord was not successful, and the Landlord was ordered to return the security deposit, in full, to the Tenants.

During this hearing, the Tenants confirmed that they received a monetary order for the return of the deposit, following the June 4, 2021, hearing, and that they are now in receipt of the deposit.

The Tenants attended this proceeding today and informed me that a decision was already made with respect to the security deposit, and that they have already received it back, but they would like to have their filing fee returned to them, which they paid for this application.

I note this application was filed by the Tenants so that they could get their the security deposit returned. However, as of the time of this hearing, a decision has already been rendered with respect to this issue; an order was made at the last hearing about the return of the deposit, and the Tenants have subsequently received the deposit back. As such, I find the legal principle of *res judicata* prevents me from hearing the merits of the Tenant's application at this hearing.

*Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I dismiss the Tenants' application for the return of their security deposit, without leave to reapply.

I note section 72 of the Act states as follows:

***Director's orders: fees and monetary orders***

***72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.***

The return of the filing fee is discretionary, and is typically awarded in situations where the applicant is successful in their application, which in this case was made for the return of the security deposit. However, since I have not heard the merits of the primary part of the Tenants application, and the matter has already been decided upon, I decline to award the recovery of this filing fee paid.

The Tenants application is dismissed, in full, without leave.

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 27, 2021

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Residential Tenancy Branch