



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on May 28, 2021 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 15, 2021 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed that no recording devices were being used for the hearing.

### Preliminary Matters

The Tenant states that no materials were given to the Tenant for the Landlord’s application. The Landlord confirms that they did not serve their application and notice of hearing on the Tenants. The Landlord states that they only provided the Tenant with the Landlord’s evidence.

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. Based on the Landlord's evidence that the Tenants were not given a copy of the Landlord's application for dispute resolution, I dismiss the Landlord's application.

The Tenant states that the legal name of Tenant SS is as set out in the Tenants' application. It is noted that the Landlords' application sets out a different spelling of Tenant SS's name. The Landlord declines to amend its application to change the spelling.

#### Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit?

Are the Tenants entitled to recovery of the filing fee?

#### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on September 21, 2019 and ended on April 30, 2021. At the outset of the tenancy the Landlord collected \$1,600.00 as a security deposit. The Tenants sent their forwarding address to the Landlord on May 10, 2021 by registered mail. The Landlord received that forwarding address. The Landlord did not complete an inspection report for either move-in or move-out.

#### Analysis

Section 23 of the Act provides, inter alia, that at the start of the tenancy the Parties must together inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The landlord must complete a condition inspection report in accordance with the regulations, both the landlord and tenant must sign the condition inspection report and, the landlord must

give the tenant a copy of that report in accordance with the regulations. Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the agreed facts that the Landlord did not complete a move-in inspection report with a copy provided to the Tenants I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the security deposit was extinguished at move-in and given the undisputed evidence that the Landlord received the Tenants' forwarding address but did not return the security deposit to the Tenants I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$3,200.00**. As the Tenants have been successful with their claim, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,300.00**.

I make the monetary order for the Tenants as named in their application.

Conclusion

The Landlord's application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **\$3,300.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 16, 2021

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Residential Tenancy Branch