



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A return of the deposit for this tenancy pursuant to section 38;
- A monetary award pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants were represented by an advocate. The landlord was assisted by a family member and interpreter.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the Act? Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began on June 1, 2020. Monthly rent was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at anytime for this tenancy. The tenants did not give authorization that the landlord may retain any portion of the deposit.

The tenancy ended on January 31, 2021. The tenants gave the landlord their forwarding address in writing by a letter dated February 16, 2021. The landlord confirmed receipt of the forwarding address on or about February 19, 2021.

The landlord has not filed an application for authorization to retain the deposit nor have they returned any portion of the deposit to the tenants. The landlord submits that the tenants did not give sufficient notice to end the tenancy and the rental unit required cleaning and work due to its state at the end of the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on January 31, 2021 and the tenant gave the landlord the forwarding address in writing on February 19, 2021. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within 15 days of February 19, 2021 as provided under the *Act*, or at all.

I find the landlord's submissions regarding insufficient notice to end the tenancy or the condition of the suite to be wholly irrelevant to the matter at hand. The landlord has not filed any application for authorization to recover costs associate with cleaning or unpaid rent. The undisputed evidence of the parties is that the tenants have not authorized the landlord to deduct any portion of the security deposit.

If the landlord had concerns about rental arrears or the condition of the rental unit at the end of the tenancy and sought to recover their losses from the security deposit they were required to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. The landlord is in the business of providing accommodations for rent payments and they may not disregard their obligations under the *Act*. I find that the landlord has failed to return the security deposit for this tenancy to the tenants without the tenants' authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$2,200.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,300.00. 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: February 14, 2022

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Residential Tenancy Branch