



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on August 17, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To keep the security deposit
- For reimbursement for the filing fee

The Tenant appeared at the hearing. The Landlords did not appear at the hearing which proceeded for 14 minutes. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

### Preliminary Issue - Service

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified as follows. They never received anything about this matter from the Landlords. The Tenant learned of the hearing through an email sent by the RTB. The Tenant called the RTB on the date of the hearing to obtain the information necessary to attend the hearing. The Tenant did not serve their evidence on the Landlords because the Landlords have blocked the Tenant from communicating with them.

The Landlords were required to serve the hearing package and their evidence on the Tenant pursuant to rules 3.1 and 3.14 of the Rules.

I have proceeded with considering whether the Tenant is entitled to return of the security deposit despite the Landlords not serving the hearing package on the Tenant because the Tenant learned of the hearing and attended the hearing ready to address the Application.

However, pursuant to rule 3.17 of the Rules, I exclude the Landlords' evidence because I accept the undisputed testimony of the Tenant that the evidence was not served on them as required and I find it would be unfair to consider evidence the Tenant has not seen.

I also exclude the Tenant's evidence pursuant to rule 3.17 of the Rules given it was not served on the Landlords in accordance with rule 3.15 of the Rules. The Landlords having blocked electronic communications is not a reason to fail to serve evidence as there are numerous other ways in which the evidence could have been served. Further, I find it would be unfair to consider evidence that was not served on the Landlords as required.

#### Preliminary Issue – Rule 7.3

Rule 7.3 of the Rules states:

##### 7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Landlords did not attend the hearing. The Tenant did attend and was prepared to address the Application. Given this, the Application is dismissed without leave to re-apply.

Pursuant to RTB Policy Guideline 17 (page 2), I considered whether the Tenant is entitled to return of the security deposit.

The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Tenant entitled to return of the security deposit?

### Background and Evidence

The Tenant testified as follows.

There was a verbal tenancy agreement between the parties. A written tenancy agreement was done mid-way through the tenancy. The tenancy started in April of 2019 and was a month-to-month tenancy. Rent was \$1,000.00 per month due on the first day of each month. The Tenant paid a \$500.00 security deposit and no pet damage deposit.

The Tenant moved out of the rental unit July 23, 2021.

The Landlords still hold the \$500.00 security deposit.

The Tenant provided the Landlords with their forwarding address in writing between July 21 and 23, 2021 and by text August 20, 2021.

The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree to the Landlords keeping the security deposit.

No move-in or move-out inspections were done and the Tenant was not provided two opportunities, one on the RTB form, to do these inspections.

### Analysis

Section 38 of the *Residential Tenancy Act* (the “Act”) sets out the obligations of landlords in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit in full or file a claim with the RTB against the security deposit within 15 days of the later of the end of the tenancy or the date the landlords receive the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the undisputed testimony of the Tenant, I accept that the tenancy ended July 23, 2021.

Based on the undisputed testimony of the Tenant, I accept that the Tenant provided the Landlords with their forwarding address in writing between July 21 and 23, 2021.

I find July 23, 2021 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from July 23, 2021 to repay the security deposit in full or file a claim with the RTB against it.

The Landlords filed the Application August 17, 2021, past the 15-day deadline. I find the Landlords failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Based on the undisputed testimony of the Tenant, I find that none of the sections outlined above apply.

Section 38(6) of the *Act* states:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the Landlords failed to comply with section 38(1) of the *Act* and that none of the exceptions set out in sections 38(2) to (4) apply. Therefore, the Landlords cannot claim against the security deposit and must return double the security deposit to the Tenant. Given this, the Landlords must return \$1,000.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

### Conclusion

The Application is dismissed without leave to re-apply.

The Landlords must return \$1,000.00 to the Tenant and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail to comply with the 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 *Act*.

Dated: March 09, 2022

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Residential Tenancy Branch