



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

This review hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirm that they received the Landlord’s evidence and a copy of the Review Consideration Decision dated February 19, 2022. The Parties each confirm that no recording devices are being used for the hearing.

### Issue(s) to be Decided

Is the Tenant entitled to return of double the security and pet deposits?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on July 1, 2021 and ended on September 30, 2021. At the outset of the tenancy the Landlord collected a security deposit of \$1,125.00 and a pet deposit of \$1,125.00. The Parties mutually conducted both a move-in and move-out report however the Tenant did not receive either of these reports within 15 days of their completion.

The Tenant states that they provided their forwarding address in an email dated September 25, 2021 and that the Landlord responded to that email. The Tenant provides a copy of the email. The Tenant states that the Landlord only returned a portion of the combined security and pet deposit in the amount of \$1,903.00 on October 18, 2021 by e-transfer. The Tenant states that they indicated in their September 25, 2021 email that they would not agree to any deductions from the deposits. The Tenant states that they also did not agree to any deductions at move-out and specifically did not sign any authorization on the move-out report dated September 30, 2021. The Tenant states that they did not receive a copy of the move-out report until provided by the Landlord for this hearing. The Tenant argues that the Landlord's right to claim against the security deposit was therefore extinguished.

The Landlord states that they received the Tenant's email address on the move-out report and that on October 15, 2021 the Landlord e-transferred the \$1,903.00 to the Tenants. The Landlord states that when the Tenant informed them on October 18, 2021 that they had not received any e-transfer the Landlord spoke with their bank who informed the Landlord that it can take a couple of days for the e-transfer to be processed. The Landlord provides a copy of its company statement of the lease account and notes that this statement shows that the e-transfer was made on October 15, 2021. The Landlord states that their bank does not provide a copy of any e-transfers made by the Landlord and that the Landlord did not provide any banking statements to show the e-transfer. The Landlord states that the Tenant confirmed receipt of the e-transfer later in the day on October 18, 2021. The Landlord states that they retained \$75.00 for an unpaid move-in fee and \$270.00 as additional charges. I note that the Landlord's lease account statement notes \$270.00 "if no insurance proof".

The Landlord states that only Tenant JT was present for the move-out inspection and argues that both Tenants were required to be present. The Landlord states that Tenant JT gave oral agreement for the deductions. The Landlord confirms that the agent

representing the Landlord at the move-out inspection is not in attendance at this hearing and did not provide a witness statement. The Landlord states that at no time did the Tenants indicate that they did not agree to any deductions, including after receipt of the returned deposit amount. The Landlord states that this implies that the Tenant gave their verbal agreement to the deductions by the Landlord.

The Tenant states that the lease account showing the e-transfer as being made on October 15, 2021 also includes a reference number below with the date 2021-10-18. The Tenant argues that this reference shows that the e-transfer was not made until that date. Legal Counsel for the Tenant notes that the deduction the Landlord made for a move-in fee was unlawful as the property is owned in fee simple and is not a strata. Legal Counsel also points out that no form K or strata rules were attached to the tenancy agreement.

The Parties confirmed at the end of the hearing that they had full opportunity to respond to each other's evidence and testimony during the hearing and that they had no further submissions to make.

### Analysis

There is nothing in the Act or Regulations that requires all tenants named on a tenancy agreement to attend a move-out inspection. This submission of the Landlord therefore does not give rise to any rights or obligations in relation to the retention or return of the security deposit.

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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. The move-out report does not include any signature by the Tenants that indicate their agreement to the deductions set out on the move-out report. The Landlord provided no evidence to support that the Tenants verbally agreed to the deductions on the move-out

report. Given the Tenant's testimony and email evidence of no written authorization for any deductions I therefore find on a balance of probabilities that the Landlord had no authority from the Tenants to withhold any deductions from the deposits.

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. Given the Tenant's supported evidence I find that the Tenants have substantiated that their forwarding address was received by the Landlord prior to the end of the tenancy. As a result, the Landlord had 15 days from September 30, 2021 to October 15, 2021 to either make a claim against the security and pet deposits or to return them. Given the Tenant's supported evidence of having received the return of some of the deposit on October 18, 2021, as the Landlord did not provide any banking evidence to support that the return was sent earlier and considering the Landlord's account statement shows a number under the entry for the e-transfer return of the security deposit that includes what I accept as a date for the e-transfer I find on a valance of probabilities that the Landlord did not return any of the deposits on or before October 15, 2021. As a result, I find that the Landlord must pay the Tenants double the combined security and pet deposits in the amount of **\$4,500.00** (\$1,125.00 plus \$1,125.00 x 2). Deducting the \$1,903.00 already returned to the Tenants leaves **\$2,597.00** owed to the Tenants. 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 **\$2,697.00**.

Section 82(2)(b) of the Act provides that the director may conduct a review by reconvening the original hearing. Section 82(3) of the Act provides that following the review, the director may confirm, vary or set aside the original decision or order. As the Tenants have been found in this review hearing to be entitled to the same entitlements

contained in the original decision dated November 30, 2021, I confirm that decision and the monetary order dated November 30, 2021 as final and binding on the Parties.

Conclusion

The Tenants are entitled to the sum of **\$2,697.00**. The original decision and monetary order dated November 30, 2021 are confirmed.

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: May 25, 2022

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Residential Tenancy Branch