



# 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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Are the tenants entitled to the return of all or portion of their security deposit?  
Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy was to begin on October 1, 2020 with the monthly rent of \$2850.00 due on the first of each month. The tenants paid a security deposit of \$1300.00 which the landlords still hold. On move in day, JP testified that after 30 minutes of being in the basement suite, he felt it was too loud for him and his wife and didn't want to take the suite. JP testified that the landlords agreed to the tenancy ending and that they could keep half of their deposit for the inconvenience. BP testified that she provided her forwarding address to the landlords in September 2021. The tenants testified that they have not received the \$650.00 as agreed upon and seek that amount along with the filing fee.

The landlord's testimony is as follows. LC testified that he tried numerous times to return the \$650.00 to the tenants. LC testified that they left large bamboo trees and some lawn equipment and fuel behind. LC testified that the tenants took two months to remove the trees and plants. PC testified that she believes the tenants used their property to store their items free of charge. The landlords testified that they incurred costs to store the items and don't feel that they should have to return any of the deposit.

### Analysis

The parties entered into an agreement to end the tenancy in good faith. They agreed that the landlords could keep half of the deposit for the inconvenience and that each would walk away, which both parties confirmed during the hearing. I find that the doctrine of estoppel applies as both parties agreed to forgo any other accommodation under the Act and therefore the original agreement of splitting the deposit applies. The landlords are entitled to retain \$650.00 of the security deposit as agreed and are ordered to return the remaining \$650.00 to the tenants.

It is worth noting that the issue could have been resolved sooner if the tenants had removed their personal items in a timely manner. The landlords mentioned that they incurred costs because of the tenants' actions, however, for absolute clarity, this decision will only address the issue of the security deposit. The parties are at liberty to file a separate application for any unresolved issues or claims they may have if they are unable to come to a resolution on their own.

The filing fee is a discretionary award usually issued by an Arbitrator after a party is fully successful after a full hearing on the merits of the application. The tenants caused undue delay in removing their items which resulted in the necessity of the hearing. Had the tenants abided by the original timeline, a hearing would not have been necessary, under these circumstances, I decline to award the recovery of the filing fee to the applicants.

### Conclusion

The tenant has established a claim for \$650.00. I grant the tenant an order under section 67 for the balance due of \$650.00. 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 *Residential Tenancy Act*.

Dated: May 24, 2022

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Residential Tenancy Branch