



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Tenants) N.J. and A.P.	310060295	MNSD, MNDCT, FFT
(Landlords) J.H. and C.B.	310061079	MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants filed claims for:

- the return of their \$875.00 security deposit;
- \$50.00 compensation for monetary loss or other money owed; and
- recovery of their \$100.00 application filing fee;

The Landlords filed claims for:

- recovery of \$508.06 in unpaid rent, retaining the security deposit for this claim;
- damage or compensation for damage under the Act of \$281.43, retaining the security deposit for this claim; and
- recovery of their \$100.00 application filing fee.

The Tenants appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlords. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. During the hearing the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlords did not attend the hearing, I considered the Tenants’ service of their Notice of Dispute Resolution Hearing on the Landlords. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlords with the Notice of Hearing documents and their evidence by Canada Post registered mail, sent on January 31, 2022. The Tenants provided a Canada Post tracking number as evidence of service. Without evidence to the contrary, I find that the Landlords were deemed served with the Tenants’ Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Tenants’ Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlords.

In addition, the Landlords applied for dispute resolution, themselves, and their hearing was scheduled at the same date and time as that of the Tenants – cross applications.

The Landlords were provided with a copy of their Notice of a Dispute Resolution Hearing on February 8, 2022; however, they did not attend the teleconference hearing scheduled for August 22, 2022, at 1:30 p.m. (Pacific Time). The phone line remained open for over 30 minutes and was monitored throughout this time.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Tenants and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on August 22, 2022, as scheduled.

Rule 7.3 states that 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 their application, with or without leave to reapply. The teleconference line remained open for over 30 minutes, however, neither of the Landlords, nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Landlords’ Application without leave to reapply.**

### Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications and the Tenants confirmed their addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenants that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Tenants confirmed that the fixed-term tenancy began on September 7, 2021, and was scheduled to run until February 28, 2022, with a monthly rent of \$1,750.00, due on the first day of each month. The Tenants confirmed that they paid the Landlord a security deposit of \$875.00, and no pet damage deposit.

The Tenants said that they moved out of the rental unit on December 15, 2021, and that they provided their forwarding address to the Landlord by email and by posting it on the Landlords' door on January 28, 2022.

In the hearing, the Tenants said that when they moved out, the Landlords confirmed that there was no damage to the residential property, in the form of a condition inspection report ("CIR"). However, the Tenants did not provide a copy of the CIR.

The Tenants acknowledged that they broke a fixed term tenancy by moving out early; however, they said that they found someone to move in on January 1, 2022, and that the Tenants paid the Landlord full rent for December 2021. The Tenants said that the new tenants were not allowed to move in until January 15, 2022, because the Landlord(s) contracted COVID and had to isolate in the residential property. However, the Tenants said that this was not the fault of the new tenants, and they moved in as soon as they were allowed to do so.

Security Deposit → \$875.00

The Tenants said that the Landlords returned only \$83.00 of the Tenants' \$875.00 security deposit, and that there was no indication of the reason for the deduction. The Tenants said they returned the \$83.00 cheque to the Landlord with the registered mail package containing their Notice of Hearing and evidence.

The Landlords applied to retain the security deposit on January 16, 2022; however, they did not attend the hearing to present the merits of their position. I note that the Landlords used the Tenants forwarding addresses in the Landlords' application, and as such, I find they were aware of the Tenants' new addresses earlier than when they officially received the Tenants' forwarding addresses. As such, I find that the Landlords were aware of the Tenants' forwarding addresses on January 16, 2022, at the latest.

Compensation for Other Money Owed → \$50.00

In the hearing, the Tenants explained this claim as being reimbursement for the cost of sending registered mail for this hearing process; however, the Tenants did not submit the receipts for these costs as proof of the expenditure.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Security Deposit

As noted above, I found the Landlords were aware of the Tenants' forwarding address earlier than the time they applied for dispute resolution, but by January 16, 2022, at the latest. Further, I find that the tenancy ended on December 15, 2021, when the Tenants moved out. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

**38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlords were required to return the Tenants' \$875.00 security deposit within fifteen days of January 16, 2022, namely by January 31, 2022, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38 (1). The Tenants undisputed evidence is that the Landlord returned only \$83.00 of the security deposit; however, the Landlords did apply to retain the security deposit on January 24, 2022. As such, I find that the Landlords complied with section 38 (1) in this regard.

The Tenants said that they returned the Landlords' \$83.00 cheque when they served their application to the Landlords. Further, the Landlords' application to retain the security deposit has been dismissed without leave to reapply, as the Landlords failed to attend the hearing into this matter. I, therefore, find that the Landlords owe the Tenants their full security deposit of \$875.00, pursuant to the Act, and I **award the Tenants** with **\$875.00** pursuant to sections 38 and 67 of the Act.

*Compensation for Other Money Owed* → \$50.00

I find that the Tenants did not provide proof of their expenditures in this regard. Further, reimbursement of registered mail fees for this process is not authorized by the legislation. As such, pursuant to section 62 of the Act, I dismiss this claim without leave to reapply.

Given that the Tenants were largely successful in their application, I also award them recovery of their **\$100.00** application filing fee pursuant to section 72 of the Act. I grant the Tenants a **Monetary Order** from the Landlords of **\$975.00**, pursuant to section 67 of the Act.

*Conclusion*

The Landlords' claims are dismissed without leave to reapply, as they failed to attend the hearing to present evidence as to the validity of their claims.

The Tenants were successful in their claim for recovery of their **\$875.00** security

deposit, and they were also awarded recovery of their **\$100.00** Application filing fee from the Landlords.

The Tenants' \$50.00 claim for reimbursement of their registered mail costs is dismissed without leave to reapply, as it is not authorized by the Act.

The Tenants are granted a **Monetary Order** of **\$975.00** from the Landlords. This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 23, 2022

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Residential Tenancy Branch