



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”), and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The landlord’s agent stated that they did not receive any evidence from the tenants. The tenant indicated it was served by registered mail

The landlord’s agent acknowledged that they had the tenant’s forwarding address in the move-out condition inspection report (the “CIR”), and they retained an amount from the Deposit because the tenant agreed in the CIR to the deduction. Neither party submitted a copy of the CIR for my review. Therefore, during the hearing I allowed the landlord’s agent to provide a copy of the CIR, by email to the tenant and the tenant then uploaded the CIR into the digital file for my review at the hearing. I found this was not prejudicial to either party as both parties were relying upon the CIR at the hearing.

The landlord’s agent indicated that the tenant’s application has listed the style of cause wrong as it should not have the words “Five Mile” behind the apartment name. However, I note the CIR report has the holding company name at the top of the page. Therefore, I find it reasonable to correct the style of cause as listed above on the covering page of this Decision. I do not find it prejudicial to the landlord as they sent an agent on their behalf, I find it would be highly prejudicial to the tenant to dismiss their application due to a small typographical error. Further, I find it more likely than not that the holding company name on the CIR, is responsible for the named apartment building.

I have reviewed the CIR and testimony before me. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Are the tenants entitled to a monetary order for return of the Deposit?

### Background and Evidence

The tenancy began on August 15, 2020. Rent in the amount of \$1,880.00 was payable on the first of each month. A security deposit of \$940.00 was paid by the tenants. The tenancy ended on September 1, 2021.

The tenant testified that they gave the landlord their forwarding address at the moveout condition inspection. The tenant stated that they did not agree with the landlord making deductions of \$150.00. However, when the landlord return the security deposit it was only in the amount of \$790.00. The tenant stated that they then again requested the landlord to repay the balance due of their Deposit.

The landlord testified that the tenant did agree in the CIR to the charges. The landlord stated if the tenant did not agree they should have not signed the CIR.

The tenant responded that they did not agree to the charges or that the CIR was accurate. The tenant stated there is no place on the form for them to disagree with the CIR or the deducts.

The landlord's agent responded that the tenant could have disagreed in the comment section that is for each item on the report. The landlord's agent stated that this is the form they are given by the landlord to use.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **Return of security deposit and pet damage 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.

...

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, although the tenant signed the CIR. I am not satisfied that the tenant agreed with the CIR or agreed to the deductions for the following reasons.

Section 20(1) of the Residential Tenancy Regulations (the "Regulations") set out what must be contained in a condition inspection report.

Section 20(k) of the Regulations require the inspection report to contain the following statement

(k) the following statement, to be completed by the tenant:

I, .....

Tenant's name

[ ] agree that this report fairly represents the condition of the rental unit.

[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....  
.....  
.....  
.....;

(l)a space for the signature of both the landlord and tenant.

I find the CIR does not comply with section 20(k) of the Regulations as it does not have the required statement that allows the tenant to agree or not agree that the CIR fairly represents the condition of the rental unit or make comments.

I do not accept the landlord's agent testimony that the tenant could have made comments to disagree in the comment section, next to each condition code for each item listed. That is not the intent of that section. As an example, the landlord use the condition code as "D" damage for walls, the comment section is to describe the damage.

Section 20(2) of the Regulation state the following.

In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [*condition inspection: end of tenancy*] must contain the following items in a manner that makes them **clearly distinguishable from other information in the report:**

**(a)a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;**

**(b)if agreed upon by the landlord and tenant,**

**(i)the amount to be deducted from the tenant's security deposit or pet damage deposit,**

**(ii)the tenant's signature indicating agreement with the deduction, and**

**(iii)the date on which the tenant signed.**

I find the CIR does not comply with the 20(2) of the Regulations. The landlord's condition inspection contains a section called, "Security Deposit Reimbursement Assessment", which I have copied this section from the CIR.

Security Deposit Reimbursement Assessment			
<b>Cleaning Charges: \$80/1st hr &amp; \$20/hr (after 1st hr)</b>	TOTAL HOURS REQUIRED	\$	Security Deposit \$ 940
<b>Account Arrears</b>		\$	Deduction Total \$ 150
<b>Unpaid Utilities</b>		\$	Total \$
<b>Cost of Damages</b>		\$	Interest Accrued \$
<b>Early Termination</b>		\$	<b>Total</b>
<b>DEDUCTION TOTAL</b>		\$	<b>Reimbursement</b> \$ 790

I find it does not contain the requirements of the section 20(2) of the Regulations as it has no place for the tenant to sign that they agree to the deduction. This must clearly be distinguishable from other information in the CIR, and it must have its own signature line.

I find the landlord's agent position that the tenant could have simply not signed the CIR if they did not agree is contrary to the Act, as under the 35(4) of the Act, the tenant must sign the CIR. I find the landlord cannot rely upon the tenant signing the CIR as required by the Act as written permission to keep any amount from the Deposit.

Further, it is the landlord's responsibility to use forms that comply with the Act and Regulations. I would suggest to the landlord to review the Residential Tenancy Branch Form RTB 27, as an example of what a conditional inspection report must contain an update their form to ensure future compliance with the Act. I caution the landlord that if they continue to use a form that is in noncompliance with the Act and Regulations they could be referred to the compliance and enforcement unit and be the subject to an investigation.

Based on the above, I find the tenants did not agree in writing for the landlord to make any deductions from their Deposit. I find the tenant only signed the CIR, under the provision of 20(1) of the Regulation and 35 of the Act. I find the landlord breached the Act when they felt justified in keeping the amount of \$150.00 from the tenants Deposit.

The security deposit is held in trust for the tenant(s) by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it or because they have created a CIR that is not

incompliance with the Act and Regulations. I find that the landlord was not entitled to retain any portion of the Deposit. Therefore, I find the landlord has breached section 38(1) of the Act.

Although the tenants were only claiming in their application the amount of \$150.00 the amount withheld by the landlord; however, I find I must apply section 38(6) the Act as the legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant(s) the sum of \$1,980.00 , comprised of double the security deposit \$940.00 on the original amount held and to recover the \$100.00 fee for filing this Application. This amount will be reduced by the amount of \$790.00 that was previously returned to the tenants. I grant the tenants a formal monetary order in the amount of **\$1,190.00**.

The tenant is given a formal monetary order pursuant to section 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

### Conclusion

The tenants' application for return of the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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: November 15, 2022

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Residential Tenancy Branch