



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNSDS-DR, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On July 12, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the Act) adjourned the tenant's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request because the documentation before her didn't indicate whether the tenants authorized specific deductions from the security deposit.

I have been delegated authority under the Act to consider the tenants' application for:

- A monetary order for a return of a tenant's security deposit by direct request pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord did not attend this hearing, although the teleconference connection was left open throughout the hearing which commenced at 1:30 p.m. and ended at 1:45 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant AWD and I were the only ones who had called in.

The tenant AWD attended the hearing and was given a full opportunity to provide affirmed testimony and evidence. The tenant testified that on July 14, 2022, he served the landlord with

1. Notice of Dispute Resolution Proceeding
2. The Interim Decision
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

By sending a copy via registered mail to the landlord's address for service in Aldergrove, B.C. The landlord's original address on the tenancy agreement was no longer valid, as noted on a text message sent to the tenant by the landlord on January 25, 2021, provided as evidence. The tracking number for the mailing is recorded on the cover page of this decision.

The tenant also sent the above noted 4 items via email to the landlord at the two email addresses recorded on the cover page of this decision. The tenant provided an email sent from the landlord using one of the emails dated May 17, 2022 to corroborate that the landlord still uses that email address to communicate with him.

Based on the evidence and undisputed testimony of the tenant, I am satisfied the landlord was served with the Notice of Dispute Resolution Proceedings package on July 19, 2022, the fifth day after it was sent via registered mail pursuant to sections 89 and 90 of the Act. This hearing proceeded in the absence of the landlord pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

#### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the Act?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the Act?

#### Background and Evidence

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,500.00, a security deposit of \$1,250.00, and a pet damage deposit of \$750.00, for a tenancy commencing on December 1, 2019
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlord by e-mail at 1:33 pm on February 27, 2022
- A copy of an e-mail from the tenants to the landlord dated February 27, 2022, providing the forwarding address
- A copy of a reply e-mail from the landlord also dated February 27, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants, an authorized deduction of \$200.00, a partial

reimbursement of \$1,250.00, and indicating the tenancy ended on February 2, 2022

- A copy of an e-transfer from the landlord to the tenants for \$1,250.00, indicating the landlord made deductions from the deposits

The tenant gave the following undisputed testimony. The tenancy began on December 1, 2019. At the commencement of the tenancy, the tenants gave the landlord a security deposit of \$1,250.00 and a pet damage deposit of \$750.00. The landlord did not conduct a condition inspection report with the tenants at the commencement of the tenancy as the landlord was not in the country at the time. The landlord did not offer the tenants the opportunity to conduct a move-in condition inspection report with an agent, either.

The tenancy ended on February 2, 2022 and the landlord returned \$1,250.00 of the tenants' security deposit/pet damage deposit via e-transfer on February 17, 2022. A copy of the e-transfer record indicates the following message:

*2000 deposit – 200 move in – 200 move out – 200 cleaning – 150 drywall repair/paint and stair bullnose.*

The tenant testified that neither he nor his co-tenant/wife authorized any of the deductions with the exception of the \$200.00 move-out fee. The tenant testified that the landlord did not provide any receipts for any of the deductions he retained from their deposit.

The tenant testified that the landlord did not conduct a condition inspection report with him at the end of the tenancy as the landlord was once again out of town. The tenants gave the landlord their forwarding address via email on February 27, 2022 and the landlord acknowledged receipt of it the same day. A copy of the email was provided as evidence.

### Analysis

At the beginning and the end of the tenancy, the landlord did not pursue a condition inspection of the rental unit with the tenants, as required by section 23 of the *Act*.

Pursuant to section 24, the landlord's right to claim against the security deposit is **extinguished** if the landlord does not offer the tenant at least two opportunities for inspection at the beginning or at the end of the tenancy.

Secondly, section 38(1) and (6) of the *Act* addresses the return of security deposits.

- (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.

...

- (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 the case before me, the landlord's right to make an application for dispute resolution against the security deposit was extinguished at the commencement of the tenancy when he failed to conduct a condition inspection report with the tenants.

The tenancy ended on February 2, 2022, and pursuant to sections 88 and 90, the landlord is deemed to have received the tenants' forwarding address on March 2, 2022 the third day after it was sent on February 27<sup>th</sup>. On February 17<sup>th</sup>, the landlord returned \$1,250.00 of the deposits, \$750.00 of which I will apply to the pet damage deposit, and I consider it returned in full. The remaining \$500.00 of the security deposit is also considered returned to the tenants.

Pursuant to section 38(6), the landlord had 15 days from March 2<sup>nd</sup> to return the tenant's full security deposit, less the agreed to deduction of \$200.00, since his right to claim against it was already extinguished for failing to conduct a condition inspection report with the tenant at the beginning (and at the end) of the tenancy. As the landlord has retained a portion of the tenants' security deposit without any authority to do so, the remainder of the tenant's security deposit is ordered returned to the tenants, doubled.

Residential Tenancy Branch Policy Guideline 17 [security deposit and set off] notes the following:

In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit.

The tenants acknowledged that they agreed that the landlord could deduct \$200.00 for the move-out fee. As such, the landlord was required to return \$1,050.00 of their \$1,250.00 security deposit.

The scenario is exemplified in PG-17:

*Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.*

*The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).*

In the case before me, I award the tenants **\$1,600.00**. ( $\$1,250.00 - \$200.00 = \$1,050.00 \times 2 = \$2,100.00$ , less amount actually returned \$500.00).

As the tenants' application was successful, the tenants are entitled to recover the \$100.00 filing fee.

### Conclusion

The tenants are awarded a monetary order in the amount of **\$1,700.00**.

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: March 20, 2023

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Residential Tenancy Branch