



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNDCT, MNSD, FFT**

### **Introduction**

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlords DH and SH appeared. Tenant SM appeared with advocate AM. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

### **Preliminary Issue**

The name of one of the landlords was spelled incorrectly on the dispute application and pursuant to section 64(3)(c) of the Act it is amended to reflect the correct spelling.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for compensation?
2. Are the tenants entitled to a monetary order for the return of security or pet deposits?
3. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on May 15, 2021. Rent was \$2,200.00 per month due on the first of the month. The landlords have not returned the security deposit of \$1,100.00 to the tenants. The tenancy ended on September 26, 2022.

The tenants testified that they ended the tenancy by providing the landlords with two months notice that they would be ending the tenancy on September 30, 2022. The landlords then requested the tenants vacate rental unit early so the unit could be cleaned. The tenants agreed and vacated the rental unit early. The tenants are seeking compensation for the prorated portion of rent for the last three days of September 2022.

The tenants testified that although a move in condition inspection was complete and the report provided in evidence a move out condition inspection report was not completed with the landlords or with the landlords' agent who was present on September 26, 2022 when the tenants vacated the rental unit. The tenants provided their forwarding address to the landlords' agent on September 26, 2022 in writing.

The landlords did not dispute the evidence of the tenants and specifically agreed that they requested that the tenants end the tenancy earlier than the date on the notice given by the tenants. The landlord also did not dispute that a move out condition inspection was not completed and a move out condition inspection report was not completed. The landlords confirmed that they have not returned any portion of the tenants' security deposit to them and acknowledged receiving the tenants' forwarding address on September 27, 2022. The landlords also confirmed that they did not file an application for dispute resolution in respect of the security deposit.

The landlords testified that the rental unit was uninhabitable and therefore needed to be professionally restored. The restoration and professional cleaning cost the landlords in excess of \$3,000.00 and therefore they wished to retain the tenants' security deposit. The landlords submitted that they should not have to refund the tenants' rent for the last

three days in September 2022 because the reason they required the tenants to vacate early was to clean the rental unit.

## Analysis

### Security Deposit

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the “Regulations”). Further, section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the tenants about a move-in inspection and the condition inspection report, I find the tenants did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the Act.

Based on the undisputed testimony of the tenants, I find the tenants were not offered two opportunities, one on the RTB form, to do a move-out inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 36 of the Act.

Based on the undisputed testimony of the tenants about a move-in inspection and the condition inspection report, I find the landlords did not extinguish their rights in relation to the security deposit pursuant to section 24 of the Act.

The parties are in agreement that no move out inspection was complete as required by section 35 of the Act. I find the landlords extinguished their right to claim against the deposits for damage to the rental unit pursuant to section 36(2) of the Act.

Based on the undisputed testimony of the tenants, I find the tenancy ended September 26, 2022.

Based on the undisputed testimony of the tenants, I find the tenants provided their forwarding address to the landlords’ agent in writing on September 26, 2022 and the landlords confirmed receiving the forwarding address on September 27, 2022.

Pursuant to section 38(1) of the Act, the landlords had 15 days from September 27, 2022 to repay the security deposit or file a claim against them. However, the landlords

have extinguished their right to file a claim against the security deposit for damage to the rental unit. The landlords did not file a claim against the security deposit. As the landlords did not comply with section 38(1) of the Act, section 38(6) of the Act requires the landlords to return to the tenants double the amount of their security deposit. I find that the tenants are entitled to the return of double the amount of their security deposit.

### Prorated Rent

The tenants are also claiming compensation for the last three days of September 2022 for the unused portion of rent for that time. Landlords and tenants can mutually agree under section 44 of the Act to end a tenancy on a date certain. A mutual agreement to end tenancy must be in writing, however I find that based on the undisputed evidence of the parties that there was a mutual agreement to end the tenancy in order to benefit the landlords. Section 1 of the Act defines rent as follows:

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;

As of September 26, 2022 by mutual agreement the tenants no longer had the right to possess the rental unit. Therefore, I find that the tenants are entitled to prorated compensation for rent for three days in September 2022 of \$220.00.

The tenant's application for compensation and for return of the security deposit are granted. The tenants' also sought compensation for mailing fees and interest. These claims were not addressed by the tenants in the hearing and I decline to grant compensation on those items.

As the tenants are successful in their application, I find that they are also entitled to return of their filing fee of \$100.00.

### Conclusion

The tenants are entitled to a monetary order as follows:

<b>Claim</b>	<b>Amount</b>
Security Deposit (double)	\$2,200.00
Prorated rent	\$240.00
Filing fee	\$100.00
<b>Total</b>	<b>\$2,540.00</b>

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 24, 2023

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Residential Tenancy Branch