



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- return of the security deposit and pet damage deposit in the amount of \$4,000.00 pursuant to section 38 of the Act; and
- authorization to recover the filing fee from the Landlords pursuant to section 72 of the Act.

The Landlords and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Correction of Landlord's Name and Addition of Landlord

This application initially named one of the Landlords, BA, as the sole landlord and respondent, and BA's name contained a typo. The parties agreed that the second of the two Landlords, HA, who is BA's spouse, had also signed the tenancy agreement as a landlord. Pursuant to section 64(3)(c) of the Act, I have amended this application to correct the spelling of BA's name and to add HA as a landlord and respondent.

### Preliminary Matter – Service of Dispute Resolution Documents

The Tenants obtained a substituted service order for email service. The Landlords acknowledged receipt of the notice of dispute resolution proceeding package and the

Tenant's documentary evidence (collectively, the "Tenants' Dispute Resolution Documents"). I find the Landlords were sufficiently served with the Tenants' Dispute Resolution Documents pursuant to section 71 of the Act.

The Tenants confirmed receipt of the Landlords' documentary evidence. I find the Tenants were served with the Landlord's evidence in accordance with section 88 of the Act.

### Preliminary Matter – Landlords' Claims

During this hearing, the Landlords described various claims against the Tenants to explain why they did not return the deposits. However, since the Landlords have not made a cross-application to claim any amounts against the deposits, I am unable to address the Landlords' claims in this decision. The Landlords are at liberty to make a separate application within the applicable time limits.

### Issues to be Decided

1. Are the Tenants entitled to the return of the deposits?
2. Are the Tenants entitled to reimbursement of the filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on March 1, 2020. Rent was \$2,000.00 per month. Tenants paid a security and pet damage deposit of \$1,000.00 each.

The parties did a walkthrough at the start of the tenancy but did not complete a condition inspection report.

The tenancy ended in April 2022. The Tenants stated they had sent an email to the Landlords on March 30, 2022 advising that they would be moving out of the rental unit on April 15, 2022. According to the Landlords, they were not aware that the Tenants

had moved out until May 3, 2022. The Landlords stated that they had texted the Tenants about May 2022 rent and were told that the Tenants had already moved out.

The parties did not complete a move-out inspection or condition inspection report.

The Tenants submitted an email to BA dated May 25, 2022 with their forwarding address. The Landlords acknowledged receipt of the Tenants' email.

The Landlords submitted that when they arrived at the property on May 6, 2022, they discovered the house was left in a mess. The Landlords submitted that the rental unit was not cleaned throughout, and there were dog feces as well as the Tenant's junk left behind. The Landlords submitted that flooring had to be replaced due to damage from feces and urine. The Landlords submitted that there was water damage around the kitchen sink. The Landlords submitted that it took weeks to clean up the property and have it re-rented. The Landlords provided photos and receipts as evidence.

According to the Landlords, the Tenants did not reach out to them about the deposits, so the Landlords thought they knew the house was left in a mess. The Landlords indicated they had texted the Tenants to tell them that the house was left in a mess. The Landlords expressed that they were surprised to be served with this application.

### Analysis

#### *1. Are the Tenants entitled to the return of the deposits?*

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security deposits at the end of a tenancy.

I find the parties completed a move-in inspection but no move-out inspection. I find the Tenants were not offered two opportunities for a move-out inspection in accordance with the Act and the regulations by the Landlord, which the Tenants then failed to participate in. For a tenant's right to a deposit to be extinguished, the landlord must use a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity for inspection. I find the Landlords did not issue such a notice to the Tenants at the end of the tenancy. Therefore, I find the Tenants did not extinguish their right to the return of the deposits under sections 24(1) or 36(1) of the

Act. In addition, the Tenants submitted this application on August 30, 2022, which was within one year of the tenancy end date. As such, I find the Tenants' right to the security deposit was also not extinguished under section 39 of the Act.

In contrast, I find the Landlords' right to claim against the security deposit for damage to the rental unit was extinguished under section 24(2) of the Act. I find the Landlords did not complete a move-in condition inspection report with the Tenants and did not provide the Tenants with a copy of this report in accordance with the Act and the regulations. Extinguishment means that the Landlords could not have made an application to claim *against* the deposits for damage to the rental unit, but could have made other claims against the security deposit within the time limit required under the Act, or, after returning the deposits, still make an application to seek compensation for damage to the rental unit.

Under section 38 of the Act, a landlord must (a) repay a security or pet damage deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
  - the date the landlord receives the tenant's forwarding address in writing,
- unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

In this case, I find the tenancy ended sometime in April 2022.

I find the Landlords were served with the Tenants' forwarding address on in writing via an email dated May 25, 2022. I find that pursuant to section 44 of the regulations, the Landlords are deemed to have received the email on the third day after emailing, or May 28, 2022.

I find that under section 38(1) of the Act, the Landlords had 15 days from May 28, 2022, or until June 12, 2022, to repay the security and pet damage deposits to the Tenants or make an application to keep the security deposit for a claim other than damage to the rental unit. I find the Tenants did not agree in writing for the Landlords to keep the deposits. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding compensation owed by the Tenants or authorization for the Landlords to keep the deposits. I find the Landlords did not return the deposits in full to the Tenants or make an application by June 12, 2022 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the deposit.

Based on the foregoing, I conclude that the Tenants are entitled to a return of double the security and pet damage deposits with interest under section 38 of the Act.

The interest rate on deposits was 0% from 2020 to 2022, and is 1.95% in 2023. According to Residential Tenancy Policy Guideline 17. Security Deposit and Set off, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenants are entitled to \$16.16 of interest on the security and pet damage deposits from when they were paid to the date of this decision, calculated as follows:

2020 \$2000.00: \$0.00 interest owing (0% rate for 86.08% of year)  
 2021 \$2000.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2022 \$2000.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$2000.00: \$16.16 interest owing (1.95% rate for 41.36% of year)

Pursuant to section 38 of the Act, I order the Landlords to pay the Tenants \$4,016.16 (or  $\$2,000.00 \times 2 + \$16.16$ ) for the return of double the security and pet damage deposits plus interest.

## *2. Are the Tenants entitled to reimbursement of the filing fee?*

The Tenants have been successful in this application. I award the Tenants reimbursement of their filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenants is calculated as follows:

Item	Amount
Return of Double the Security and Pet Damage Deposits ( $\$1000.00 + \$1,000.00$ ) $\times$ 2	\$4,000.00
Interest on Deposits	\$16.16
Filing Fee	\$100.00
<b>Total Monetary Order for Tenants</b>	<b>\$4,116.16</b>

Conclusion

The Tenants' claims for return of the deposits and reimbursement of the filing fee are successful.

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **\$4,116.16**. This Order may be served on the Landlords, filed in the Small Claims Division of the Provincial 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 31, 2023

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Residential Tenancy Branch