



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNSDS-DR, FFT

### Introduction

On August 24, 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 for the following reasons:

*I find that the tenants have provided only the first page, second page, and addendum page of the tenancy agreement. I further find that I am not able to consider the tenants’ Application for Dispute Resolution without a complete tenancy agreement, which forms a part of the Application, and that a participatory hearing is necessary.*

This hearing dealt with the Tenants’ application for:

- return of the security deposit in the amount of \$875.00 pursuant to sections 38 and 38.1 of the Act; and
- authorization to recover the filing fee from the Landlord pursuant to section 72 of the Act.

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

The Landlord confirmed receipt of the notice of dispute resolution proceeding and the Tenants’ documentary evidence. JC confirmed receipt of the Landlord’s documentary evidence.

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

### Preliminary Matter – Landlord’s Claims

During this hearing, the Landlord described various claims against the Tenants to explain why she did not return the security deposit. However, since the Landlord has not made a cross-application to claim any amounts against the security deposit, I am unable to address the Landlord’s claims in this decision. The Landlord is 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 security deposit?
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 August 15, 2019 and ended on May 27, 2022. The Tenants paid a security deposit of \$875.00.

According to JC, the Tenants only received the signed pages of the tenancy agreement from the Landlord instead of the entire agreement.

The parties did not complete any move-in or move-out inspections or condition inspection report. The rental unit had not been cleaned at the start of the tenancy, so the parties arranged for the Tenants to do some cleaning in return for a rent break. According to the Landlord, she offered to do a move-out inspection but the Tenants had to leave early in the morning.

The Tenants sent their forwarding address to the Landlord via registered mail sent on June 4, 2022 and delivered on June 11, 2022. The Landlord acknowledged receipt of this letter. The Landlord stated that the Tenants left the house without cleaning, including stained carpets, as well as dirty patio, sink, and lobby floor. The Landlord

stated that the oven tray was damaged and there were holes and stickers on the walls. The Landlord stated that the Tenants also did not return a fob key. The Landlord provided calculations to show that the amounts she was claiming exceeded the security deposit. The Landlord explained that she did not return the security deposit to the Tenants for these reasons. The Landlord explained that she did not make an application as the parties had an amicable relationship.

### Analysis

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

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 did not complete any move-in or move-out inspections. I find the Tenants were not offered two opportunities for inspections 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 the 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 Landlord did not issue such a notice to the Tenants at the start or end of the tenancy. Therefore, I find the Tenants did not extinguish their right to the return of the security deposit under sections 24(1) or 36(1) of the Act. In addition, the Tenants submitted this application on July 25, 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 Landlord's 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 Landlord did not offer the Tenants two opportunities for a move-in inspection, 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 Landlord could not have made an application to claim *against* the security deposit 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 deposit, 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 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.

Section 38.1 of the Act allows a tenant to apply for the return of deposits by way of a direct request application.

In this case, I find the tenancy ended on May 27, 2022.

I find the Landlord was served with the Tenants' forwarding address on in writing on June 11, 2022.

I find that under section 38(1) of the Act, the Landlord had 15 days from June 11, 2022, or until June 26, 2022, to repay the security deposit to the Tenants or make an application to keep the deposit for a claim other than damage to the rental unit. I find the Tenants did not agree for the Landlord to keep the security deposit. 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 Landlord to keep the security deposit. I find the Landlord did not return the security deposit in full to the Tenants or make an application by June 26, 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.

In addition, Residential Tenancy Policy Guideline 17. Security Deposit and Set off ("Policy Guideline 17") states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit. I find the Tenants did not specifically agree to waive the doubling provisions of the Act.

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

The interest rate on deposits was 0% from 2019 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, 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 \$6.97 of interest on the security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2019 \$875.00: \$0.00 interest owing (0% rate for 38.08% of year)  
 2020 \$875.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2021 \$875.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2022 \$875.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$875.00: \$6.97 interest owing (1.95% rate for 40.82% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenants \$1,756.97 (or  $\$875.00 \times 2 + \$6.97$ ) for the return of double the security deposit 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 Deposit ( $\$875.00 \times 2$ )	\$1,750.00
Interest on Security Deposit	\$6.97
Filing Fee	\$100.00
<b>Total Monetary Order for Tenants</b>	<b>\$1,856.97</b>

Conclusion

The Tenants' claims for return of the security deposit 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 **\$1,856.97**. This Order may be served on the Landlord, 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 29, 2023

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Residential Tenancy Branch