



# 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 Tenants' security deposit and/or pet damage deposit in the amount of \$3,900.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

One of the Tenants, AAE, attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord did not attend this hearing. I left the teleconference hearing connection unlocked until 1:40 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that AAE and I were the only ones who had called into the hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

AAE testified that the notice of dispute resolution proceeding package and the Tenants' documentary evidence were sent to the Landlord via registered mail in two packages on January 26, 2023.

AAE confirmed that the packages were sent to the Landlord at the rental property address because the Tenants had received a two month notice to end tenancy stating that the Landlord or his spouse was moving into the rental property.

AAE explained that two packages were necessary due to the volume of the Tenants' documentary evidence, which includes pages of text message correspondence between the parties. The Tenants submitted the registered mail tracking numbers for the packages (first two of three tracking numbers referenced on the cover page of this decision). Tracking records indicate that the packages were delivered on January 30, 2023.

Based on the foregoing, I find the Landlord was served with the notice of dispute resolution proceeding package and the Tenants' documentary evidence in accordance with sections 88 and 89 of the Act.

Having found the Landlord to be duly served with notice of this hearing, I directed that this hearing proceed in the Landlord's absence.

#### Preliminary Matter – Amendment of Parties

This application initially named additional tenants and applicants, who are the Tenants' family members. AAE confirmed that his father, AME, had signed a tenancy agreement with the Landlord for the main suite of the rental property. AAE confirmed that the Tenants resided there with their other family members. AAE testified that he later rented the basement suite of the rental property from the Landlord under a verbal agreement. AAE confirmed that their entire family moved out of the rental property after receiving a notice to end tenancy from the Landlord. Based on AAE's testimony, I find the tenants who entered into tenancy agreements with the Landlord are AAE and AME, and therefore have standing to bring this application. Pursuant to section 64(3)(c) of the Act, I have amended this application to include only the AAE and AME as tenants and applicants.

#### Issues to be Decided

1. Are the Tenants entitled to the return of the security 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, 2019 and ended on November 30, 2022. At the start of the tenancy, the rental unit consisted of the main suite of the rental property only. A security deposit of \$1,500.00 was paid for the main suite. At the time that the tenancy ended, rent for the main suite was \$3,900.00 per month. The Tenants submitted a tenancy agreement signed by AME and the Landlord into evidence. This agreement consists of only pages 1 and 3 of the standard form Residential Tenancy Branch agreement and an addendum page.

In July 2021, the basement suite of the rental property became available. AAE moved downstairs into the basement suite and paid a security deposit of \$450.00 to the Landlord. At the time that the tenancy ended, rent for the basement suite was \$925.00 per month.

According to AAE, the Tenants were served with a two month notice to end tenancy for landlord's use of property dated September 19, 2022, and the Tenants and their family members all moved out of the property in accordance with that notice.

AAE confirmed that the parties did not sign any move-in or move-out condition inspection reports. AAE noted the tenancy agreement mentioned that AME would receive the keys five days early and will take care of some cleaning at the start of the tenancy. According to AAE, the parties did a move-out inspection during which the Tenants were not told about any issues. AAE stated that afterwards, the Landlord messaged AAE's mother claiming that there were issues and that he wanted to keep the security deposits.

AAE testified that the Tenants provided their forwarding address to the Landlord in writing by way of a letter dated December 21, 2022 (the "Forwarding Address Letter") and by using a completed Residential Tenancy Branch form (the "RTB-47"). Copies of the Forwarding Address Letter and the RTB-47 have been submitted into evidence. AAE testified that the Forwarding Address Letter and the RTB-47 were sent to the Landlord via registered mail on December 21, 2022. The Tenants submitted the registered mail tracking number into evidence (third of three tracking numbers referenced on the cover page of this decision). Tracking records indicate that this package was available for pickup from December 22, 2022 until January 21, 2023, when it was returned as unclaimed.

AAE testified that a copy of the Forwarding Address Letter was also sent to the Landlord via email on December 21, 2022. A copy of this email is submitted into evidence. AAE confirmed that he continued to correspond with the Landlord at this email address in January 2023.

AAE confirmed that the Tenants did not agree for the Landlord to keep the security deposits and did not receive the deposits back from the Landlord.

### Analysis

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

According to sections 38(1), 38(3), and 38(4) of the Act, a landlord must repay a security deposit to the tenant with interest or 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 or a previous order from the Residential Tenancy Branch.

In this case, I accept the Tenants' evidence that the tenancy ended on November 30, 2022.

Based on AAE's undisputed testimony and the undisputed evidence submitted by the Tenants, I find the Tenants served the Landlord with their Forwarding Address Letter and the RTB-47 via registered mail on December 21, 2022, in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenants' forwarding address in writing on December 26, 2022, or the fifth day after mailing. I note that according to Residential Tenancy Policy Guideline 12. Service Provisions, where a document served by registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. I accept the Tenants' evidence that a copy of the Forwarding Address Letter was also emailed to the Landlord on December 21, 2022 and the parties had continued to correspond via email beyond that date.

Pursuant to section 38(1) of the Act, I find the Landlord had until January 10, 2023, or fifteen days after being deemed served with the Tenants' forwarding address in writing, to return the security deposits to the Tenants in full or make an application for dispute

resolution to claim against the deposits. I find the Tenants did not agree for the Landlord to keep the security deposits. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding any compensation owed to the Landlord by the Tenants or authorization for the Landlord to keep the security deposits. I find the Landlord did not return the security deposits in full to the Tenants or make an application by January 10, 2023 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 security deposit.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find there is no evidence that the Tenants had refused two opportunities by the Landlord for move-in or move-out inspections in accordance with the Act and the regulations, such that their rights to the security deposits were extinguished. For reference, section 17 of the regulations requires that the second or final opportunity for inspection must be given to a tenant using the approved (Residential Tenancy Branch) form. I find there is no evidence to suggest that the Landlord had provided the Tenants with opportunities for inspection in compliance with such requirements. Furthermore, I have found the Landlord was deemed served with the Tenants' forwarding address in writing by January 10, 2023, which was within one year after the tenancy ended. Therefore, I find the Tenants' right to the return of the security deposits was not extinguished under any of sections 24(1), 36(1), or 39 of the Act.

I conclude the Tenants are entitled to a return of double the security deposits under sections 38(1) and 38(6) of the Act.

In addition, section 38(1) of the Act requires that interest on the security deposit be paid to a tenant. 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 security 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 \$12.93 (\$9.95 + \$2.98) of interest on the security deposits from when the deposits were paid to the date of this decision, calculated as follows:

2019 \$1500.00: \$0.00 interest owing (0% rate for 83.82% of year)  
 2020 \$1500.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2021 \$1500.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2022 \$1500.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$1500.00: \$9.95 interest owing (1.95% rate for 33.97% of year)

2021 \$450.00: \$0.00 interest owing (0% rate for 50.40% of year)  
 2022 \$450.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$450.00: \$2.98 interest owing (1.95% rate for 33.97% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenants \$3,912.93 (or  $(\$1,500.00 + \$450.00) \times 2 + \$12.93$ ) for the return of double the security 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 Deposits $(\$1,500.00 + \$450.00) \times 2$	\$3,900.00
Interest on Security Deposits	\$12.93
Filing Fee	\$100.00
<b>Total Monetary Order for Tenants</b>	<b>\$4,012.93</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 **\$4,012.93**. 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 04, 2023

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Residential Tenancy Branch