



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution by Direct Request pursuant to section 38.1 of the Residential Tenancy Act (the "Act"). In an Interim Decision dated September 20, 2022, an adjudicator adjourned the matter to a participatory hearing.

The tenants applied for the following orders:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to section 38; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Reconvened Hearing, interim decision, and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

The parties were cautioned that recording of the hearing is prohibited based on Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

In a decision dated September 20, 2022, the adjudicator found that the tenants' Direct Request evidence was insufficient to establish service of the tenants' forwarding address on the landlord. Further, the adjudicator noted that the tenants' Direct Request Worksheet was not signed by the tenants which is required to confirm that the tenants agree with the statements included in the form. Based on these discrepancies, the adjudicator found that the evidentiary material submitted by the tenants did not meet the standard necessary to proceed via Direct Request and raised questions that could only be addressed in a participatory hearing.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed to the following details of the tenancy agreement. The parties entered into a written tenancy agreement starting January 15, 2022. Monthly rent was \$2,300.00 payable on the first of each month. The tenants paid the landlord a security deposit of \$1,150.00 and a pet deposit of \$1,150.00 which the landlord continues to hold. The parties disagreed as to the date the tenancy ended.

The tenant's testified that they removed their belongings from the rental property on or about June 17<sup>th</sup>, 2022. On June 30<sup>th</sup>, 2022, a cleaner attended the rental property to clean the carpets following which, the tenants vacated the property for the final time, placed the keys in the mailbox, and sent an email and text message to the landlord advising them of the same. Based on this, the tenant's testified that the tenancy ended on June 30, 2022.

The tenants directed my attention to a letter dated May 31, 2022, which is submitted into evidence. In the letter, which is signed by each of the tenants, the tenants indicate that they will have all of their belongings removed from the property as of June 30<sup>th</sup>.

The landlord testified that they issued a 10-Day Notice for Unpaid Rent on July 2, 2022, with an effective date of July 15, 2022. Based on this, the landlord testified that the tenancy ended on July 15<sup>th</sup>, 2022, the effective date of the 10-Day Notice.

The parties agreed that a move-in condition inspection was completed, and a copy of that report was provided to the tenants. A copy of the move-in condition inspection report is submitted into evidence.

The tenants testified that no move-out condition inspection report was completed, but the tenants believed that a move-out condition inspection was conducted on June 17<sup>th</sup>, 2022. The tenants testified that the landlord was at the property, and they walked through the property discussing damage from prior to the tenancy and work that had been done during the tenancy. The tenants testified that the landlord commented that the property looked as good as it did when they moved in. The tenants testified that their belongings were moved out of the property at that time, and they were cleaning.

The tenants testified that they provided the landlord with their forwarding address in the letter dated May 31, 2023, which they mailed to the landlord. The tenants are seeking the return of their security and pet deposits in the amount of \$4,600.00.

The landlord testified that no move-out condition inspection was completed. The landlord stated that the purpose of his visit to the rental property on June 17<sup>th</sup> is stated in the Notice of Entry dated June 3, 2022, which is submitted into evidence. The landlord disputed that the discussion with the tenants at the property June 17<sup>th</sup> was a move-out condition inspection and denied having inspected the rental property at that time. Further, the landlord notes that on June 17<sup>th</sup>, the tenants had not fully vacated the rental unit, nor had they provided the landlord with the keys to the rental property.

The landlord testified that they offered the tenants the opportunity to participate in a move-out condition inspection on two occasions. First, in response to the tenants' letter dated May 31, 2022, the landlord sent a letter in which they advised the tenants that they are responsible for setting up a move out inspection by contacting the landlord in writing or by phone. Second, the landlord testified that on July 2, 2022, they attended the property to pick up the keys the tenants' left in the mailbox after having received a text message and email on June 30<sup>th</sup> regarding the same. At this time, the landlord posted a Notice of Final Opportunity to Schedule a Condition Inspection (the "Notice of Final Opportunity") to the door of the rental property.

The landlord testified that they received the tenants letter dated May 31, 2022, on June 2, 2022, which contained the tenants' forwarding address.

### Analysis

The parties disagree as to the date the tenancy ended. However, I find that the tenancy ended in accordance with section 44(d) of the Act on June 30<sup>th</sup>, 2022, when the tenants vacated the rental property, left the keys to the rental property in the mailbox, and advised the landlord of the same.

The parties agree that the landlord has not returned any portion of the \$1,150.00 security deposit or the \$1,150.00 pet deposit. In the May 31<sup>st</sup>, letter to the landlord, the tenants sought the return of both the pet and security deposit. The parties further agreed that the tenants provided the landlord with their forwarding address on May 31<sup>st</sup>, and it was received by the landlord on June 2, 2022.

Section 38(1) of the Act requires a landlord to repay security and/or pet deposits with interest or make an application for dispute resolution claiming against the security deposit and/or pet deposit. Section 38(6) of the Act states that if the landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet deposit and must pay the tenant double the amount of the security deposit, pet deposit, or both, as applicable.

However, section 24 and 36 of the Act set out that landlords and tenants can extinguish their rights to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations").

The parties agreed that a move-in condition inspection report was completed, and a copy provided to the tenant at the outset of the tenancy. As a result, I find that the tenants did not extinguish their rights to the security and pet deposits pursuant to section 24 of the Act.

I have considered the testimony of the parties and I find in favour of the landlord, that a move-out condition inspection was not completed. However, while the landlord purports to have offered the tenants two opportunities to participate in a move-out inspection in accordance with section 36(2) of the Act, I disagree.

I do not accept that the tenants were sufficiently served with the Notice of Final Opportunity which was posted to the door of the rental property after the tenancy ended.

In my view, there was no reasonable expectation that the tenants would receive the Notice of Final Opportunity given that they were no longer residing at that rental property. Moreover, the evidence is clear that the landlord was in contact with the tenants and in possession of their forwarding address on July 2, 2022, when they posted the Notice of Final Opportunity to the rental property. Therefore, I find the landlord could have served the tenants with the Notice of Final Opportunity to Schedule a Condition Inspection in a manner in which it could be reasonably expected that they received it, such as to their forwarding address. Based on the foregoing, I find that the tenants did not extinguish their right to the security deposits pursuant to section 36 of the Act.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from the date the tenancy ended or the date the tenant's provided the landlord with a copy of their forwarding address, whichever is later, to repay the security and pet damage deposits or file a claim against them. The accepted evidence is that the tenants provided the landlord with their forwarding address prior to the end of the tenancy. As a result, the landlord had 15 days from the date the tenancy ended, June 30, 2022, to repay the tenants' pet and security deposits or make a claim against the deposits.

The landlord concedes that they did not repay the deposits to the tenants or make a claim against them by filing an application for dispute resolution. Rather, the landlord retained the \$1,150.00 security deposit and \$1,150.00 pet deposit. I have determined that the tenant's did not extinguish their rights in relation to the deposits pursuant to section 24 or 36 of the Act and, on that basis, I find that they are entitled to double the amount of the deposits held pursuant to section 38(6)(b) of the Act plus interest.

Policy Guideline 17 sets out that where a landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

Based on the foregoing, I order the landlord to return to the tenants double the security and pet deposits plus interest. To give effect to this order, the tenants are granted a monetary order in the amount of \$4,618.68 as set out below.

As the tenants were successful in their application, they are entitled to recover the filing fee paid for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$4,718.68 as follows:

<b>Item</b>	<b>Amount</b>
Security Deposit (\$1,150.00 x 2)	\$2,300.00
Pet Deposit (\$1,150.00 x 2)	\$2,300.00
Interest on \$2,300.00 (Pet and Security Deposit)	\$18.68
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$4,718.68</b>

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in 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: June 7, 2023

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Residential Tenancy Branch