



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit and to recover the filing fee from the landlords for the cost of the application.

The tenants were represented at the hearing by an agent, who gave affirmed testimony. Both named landlords also attended. The parties agree that all evidence has been exchanged, and therefore the evidence and testimony I find relevant to the application is considered in this Decision.

The landlords did not give affirmed testimony, however one of the landlords gave submissions.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for return of all or part of the security deposit?
- Should the tenants recover the filing fee from the landlord?

### Background and Evidence

The tenants' agent testified that this fixed-term tenancy began on August 1, 2023 and was to revert to a month-to-month tenancy after July 31, 2024, however the tenancy ended on July 31, 2024. Rent in the amount of \$3,210.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,605.00, and no pet damage deposit was collected.

The tenants' agent further testified that the landlords returned \$300.00 of the security deposit by e-transfer about 2 weeks after the tenancy ended. The tenants have not provided the landlord with a forwarding address in writing, however having returned a portion of the security deposit to the tenants, the tenants seek the balance of \$1,305.00 and recovery of the \$100.00 filing fee.

#### SUBMISSIONS OF THE LANDLORDS:

The tenants did not serve the landlords with the hearing package in accordance with the law, and the landlords have provided a copy of an email from the Residential Tenancy Branch dated September 5, 2024 with attachments, regarding the Notice of Dispute Resolution Proceeding and other documents as a courtesy. The landlords do not agree to receive the tenants' forwarding address by email.

#### Analysis

Firstly, a party who makes a claim against another party must serve the respondent with the Application for Dispute Resolution and notice of a hearing in one of the following ways according to the *Residential Tenancy Act*:

#### **Special rules for certain records**

**89** (1) application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) [Repealed 2023-47-98.]
- (f) by any other means of service provided for in the regulations.

The *Act* also states that a landlord has 15 days from the later of the date the tenancy ends or the date that the landlord receives the tenants' forwarding address in writing to

return the security deposit in full to the tenants, plus interest, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either within that 15 day period, the landlord must repay double the amount. However, if the tenants do not provide the landlords with a forwarding address in writing within 1 year of the date the tenancy ends, the landlord may keep the security deposit and the tenants may not make a claim for the return of the deposit. The applicable section of the *Act* states as follows:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a record may be served under section 88 (c), (d) or (f) *[service of records]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

### **Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Where the law requires a party to provide documents to another party, those documents are deemed to be legal documents, which must be served in one of the following ways, which includes a forwarding address:

**How to give or serve records generally**

**88** All records, other than those referred to in section 89 [*special rules for certain records*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) [Repealed 2023-47-97.]
- (j) by any other means of service provided for in the regulations.

The regulations permit service by email if the parties had previously agreed in writing to serve legal documents by email. If the parties had not previously agreed in writing, documents must be served by one of the methods set out in Section 88 above.

Since the tenants have not served the landlords with the Application for Dispute Resolution and Notice of Dispute Resolution Proceeding in accordance with Section 89, and have not provided the landlords with a forwarding address in writing by one of the methods set out in Section 88, I dismiss the tenants' application in its entirety with leave to reapply.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety with leave to reapply.

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: October 25, 2024

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Residential Tenancy Branch