



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 23, 2019 (the "Application"). The Tenant applied for return of the security deposit.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Co-landlord. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenant advised at the hearing that she was not waiving her right to return of double the security deposit under section 38(1)(6) of the *Residential Tenancy Act* (the "Act").

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?

### Background and Evidence

The parties agreed on the following. There was a written tenancy agreement in this matter. The tenancy started July 01, 2016 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was \$1,685.00 per month due on the first day of each month. The Tenant paid a \$825.00 security deposit.

The parties agreed the tenancy ended December 01, 2019.

The parties agreed the Tenant provided her forwarding address to the landlords in writing by email December 20, 2019.

The parties agreed the landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The landlords advised that they did not apply to the RTB to keep the security deposit.

Landlord B.M. took the position that the Tenant did agree in writing at the end of the tenancy that the landlords could keep some of the security deposit. The landlords pointed to an email in evidence labelled email #3. Upon further discussion, landlord R.H. testified that he did not understand this to be an agreement that the landlords could keep the security deposit but an offer by the Tenant to pay \$300.00 for the issues raised. Landlord R.H. testified that there was back and forth between the parties about this and the landlords did not accept the \$300.00 offered by the Tenant.

The Tenant testified that the \$300.00 mentioned was part of a negotiation between the parties and was not an agreement by her that the landlords could keep \$300.00 of the security deposit.

The parties agreed they inspected the rental unit together at the start of the tenancy but did not do a Condition Inspection Report.

The parties agreed there was no proper inspection done at the end of the tenancy and the Tenant was not offered two opportunities as required to do an inspection.

### Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

There is no issue that the tenancy ended December 01, 2019 as the parties agreed on this.

There is no issue that the landlords received the Tenant's forwarding address in writing December 20, 2019 as the parties agreed on this.

December 20, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The landlords had 15 days from December 20, 2019 to repay the security deposit in full or file a claim with the RTB against the security deposit.

There is no issue that the landlords did not return the security deposit or file a claim with the RTB against the security deposit by January 06, 2020, the deadline given January 04, 2020 fell on a Saturday. The landlords acknowledged at the hearing that they still hold the security deposit. The landlords testified that they did not apply to the RTB to keep the security deposit.

I note that the landlords did submit a Monetary Order Worksheet for this hearing. However, as explained to the parties at the hearing, the landlords were required to complete and submit their own Application for Dispute Resolution with the RTB.

Given the landlords did not repay the security deposit or file a claim with the RTB against the security deposit by January 06, 2020, I find the landlords failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(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...

Based on the testimony of the parties about a move-in and move-out inspection, I find this was not a situation where the Tenant was offered two opportunities to do these as required but did not participate. Therefore, the Tenant did not extinguish her rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

Given the testimony of the parties, I find the landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

I am not satisfied the Tenant agreed in writing at the end of the tenancy that the landlords could keep some or all of the security deposit. I have read email #3 and am satisfied it is an attempt by the Tenant to settle this matter. I am not satisfied the email sets out a statement that the landlords can keep a specific amount of the security deposit, which I find is required under section 38(4) of the *Act*. I also find this given both the Tenant and landlord R.N. agreed email #3 reflects a negotiation or offer versus an agreement about the landlords keeping some of the security deposit. I do not find that section 38(4) of the *Act* applies.

Given the above, I find the landlords failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the landlords are not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,650.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009. The Tenant is issued a Monetary Order pursuant to section 67 of the *Act*.

### Conclusion

The Tenant is entitled to \$1,650.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the

Landlord fails to comply with the Order, the Order may be 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 *Act*.

Dated: May 26, 2020

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Residential Tenancy Branch