



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm that no recording devices are being used for the hearing. The Parties confirm receipt of each other's evidence.

### Preliminary Matter

The Tenant indicates that the claim for compensation includes an agreement in relation to the state of the unit at move-out. The Landlord indicates that they will be making a claim in relation to the state of the unit at move-out.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the state of the unit at move-out is not related to the claim for return of the security deposit and appears to be related to a possible future claim by the Landlord, I dismiss the Tenants claim for compensation with leave to reapply. The Landlord is at liberty to make its own application.

Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on September 30, 2020 and ended on May 17, 2021. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. No move-in inspection was offered by the Landlord or mutually conducted by the Parties. No move-in inspection report was completed. Prior to the end of May 2021, the Landlord returned \$750.00 of the security deposit by e-transfer to the Tenants and retained the remaining \$200.00. The Tenants informed the Landlord at this point that the Landlord could not withhold their security deposit. On June 10, 2021 the Tenants provided their forwarding address to the Landlord by registered to the Landlord's address as set out in the tenancy agreement. The mail was not collected, and the Landlord did not receive the forwarding address.

The Landlord states that they moved out of the address in the tenancy agreement before the end of May 2021 and that the Landlord did not inform the Tenants of the Landlord's new address. The Landlord confirms that they made no application to claim against the security deposit and that they were not given any written authorization from the Tenants to retain any portion of the security deposit.

Analysis

Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed evidence that no move-in inspection was conducted, or report completed I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Landlord did not receive the forwarding address given the extinguishment of the Landlord's right to claim against the security deposits at the onset of the tenancy, I consider that at this point in the tenancy the Landlord knew or ought to have known that the security deposit could be an issue. I also consider that given the Tenant's undisputed evidence that they informed the Landlord that the Landlord could not retain any portion of the security deposit I find that the Landlord knew or ought to have known that the matter of the security deposit would be an issue. By not informing the Tenants of the Landlord's change of address for service of documents I consider that the Landlord was trying to avoid the Tenants and prejudice their rights to claim return of the security deposit. The Landlord gave no evidence of having taken any steps of ensuring that any mail to the Landlord's former residence that may come after the move could be forwarded to the Landlord. For these reasons I find that the Landlord received the forwarding address at the address provided by the Landlord for service of documents and any failure of the Landlord to collect the served documents was at the peril of the Landlord. As the Landlord did not make a claim to retain any portion of the security deposit or did not have the Tenants' written authorization to retain any portion of the security deposit, I find that the Landlord must now repay the Tenants double the security deposit of **\$1,900.00**. As the Tenants have been successful with their claim I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total

entitlement of **\$2,000.00**. Deducting the **\$750.00** already paid to the Tenants leaves **\$1,250.00** owed to the Tenants.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,250.00**. If necessary, this order may be filed in the Small Claims 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: April 26, 2022

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Residential Tenancy Branch