



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenants testified that they sent the landlord the dispute resolution hearing package, including a copy of the application for dispute resolution and the Notice of Hearing by registered mail on July 9, 2014. The tenants provided a receipt, a tracking number and a confirmation from Canada Post that the package had been received. The landlord testified that he had received the package. Based on all of the evidence, and pursuant to sections 89 and 90 of the *Act*, I find the landlord served with the dispute resolution package and notice of hearing on July 14, 2014, 5 days after the registered mailing.

### Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

### Background and Evidence

This fixed term tenancy with respect to a 3 bedroom townhouse commenced on June 1, 2013. Monthly rent was set at \$2,600.00, payable on the first of each month. The landlord received, on May 17, 2013, a \$1,300.00 security deposit. Both parties agree

the landlord returned \$600.00 to the tenants, retaining \$700.00. The landlord included a letter to the tenants with the \$600.00 stating his reasons for retaining \$700.00.

Both parties agree that when they had moved into the rental unit, it was not clean. The tenants both testified that the landlord provided the tenants with \$150.00 to clean the rental unit themselves. The landlord testified that he provided the tenants with \$250.00 in compensation for their cleaning efforts. No condition inspection reports were completed on move-in or move-out.

Tenant S testified that, on May 31, 2014 the landlord conducted a “walk through” at which time the landlord indicated that “everything appears satisfactory”. The landlord agreed with this testimony. Tenant V testified that, on moving out, she and Tenant S cleaned the rental unit. Both tenants testified that their forwarding address was provided to the landlord on May 31, 2014, as well.

The landlord testified that, on further inspection of the unit after the tenants had moved out, he discovered damage to the rental unit. The landlord testified that he was required to paint the tenants’ bedroom at his own cost. The landlord also testified that the tenants stayed in the rental unit for one additional day and he received no compensation.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant’s security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

The date for the return of the security deposit is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. In this case, the landlord had 15 days after May 31, 2014 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “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.” As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their security deposit, section 38(4)(a) of the *Act* does not apply to the tenants’ security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would also seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

It is worth noting in this matter that the right of a landlord to retain all or part of a security may be extinguished if the landlord has failed to meet start or end of tenancy condition report requirements.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary Order amounting to double the value of their security deposit with interest calculated on the original amount only. No interest is payable. This monetary Order is reduced by the \$600.00 already returned to the tenants by the landlord.

Having been successful in this application, I find further that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

In accordance with section 38 of the *Act*, I find that the tenants are entitled to a monetary Order amounting to double the original security deposit plus their filing, less the \$600.00 already returned to the tenants.

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$1,300.00
Monetary Award for landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,300.00
Less Amount returned by landlord	- 600.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$2,050.00</b>

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 28, 2014

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Residential Tenancy Branch

