



# Dispute Resolution Services

Page: 1

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* ("Act") for:

- a monetary order for the return of double the amount of their security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

The landlord did not attend the hearing, which lasted approximately 26 minutes. The two tenants, tenant BD ("tenant") and "tenant JG" attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was personally served with the tenants' amended application for dispute resolution hearing package ("Application") on January 14, 2015. Tenant JG confirmed that she witnessed this service. In accordance with section 89 of the *Act*, I find that the landlord was served with the tenants' Application on January 14, 2015.

### 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

The tenant testified that this tenancy began on February 15, 2014 and ended on December 15, 2014. The tenants provided a copy of a letter, dated November 12, 2014, indicating that they intended to vacate the rental unit by December 15, 2014. The tenants testified that they served this letter to the landlord in person on November 12, 2014 and that the landlord signed the letter acknowledging receipt. The tenants provided a copy of this letter with their Application. The tenants confirmed that the landlord did not make an issue about their notice to vacate or the date that they intended to move out.

The tenants testified that monthly rent in the amount of \$1,100.00 was payable in advance on the 31<sup>st</sup> day of each month, which included cable and internet services provided by the landlord. The tenant testified that the landlord made a verbal offer to reduce the tenants' rent by \$180.00 per month if the tenants supplied their own cable and internet services, regardless of the amount of the monthly cost for their own services. The tenants indicated that they supplied their own cable and internet services and paid the landlord a reduced rent of \$920.00 per month beginning on March 1, 2014 and for the remainder of this tenancy, as agreed. The tenant testified that a written tenancy agreement governs this tenancy, but a copy was not provided by the tenants with their Application. The tenant noted that the reduction in rent for cable and internet services was not included in the tenancy agreement.

The tenants stated that a security deposit of \$550.00 was paid to the landlord around February 2 or 3, 2014, but they could not recall the exact date. The tenants noted that the landlord continues to retain their entire security deposit. The tenant stated that the landlord claimed that \$40.00 per month for cable and internet services was owing to the landlord at the end of this tenancy and that he was keeping the security deposit for this reason. The tenant stated that the landlord was unhappy that the tenants were not paying enough for cable and internet services and that he wished to recover the above amount to account for this reason. The tenants confirmed that no unpaid rent was owed at the end of this tenancy.

The tenant confirmed that a forwarding address was provided to the landlord in writing on December 15, 2014. The tenants provided a copy of this letter with their Application. Tenant JG confirmed that she witnessed the tenant provide this letter to the landlord in person. The tenants confirmed that the landlord did not have written permission to retain any amount from their security deposit. The tenants confirmed that when they attended at the Residential Tenancy Branch ("RTB") to file their Application in January

2015, they were advised that the landlord did not make an application for dispute resolution to retain any amount from the tenants' security deposit.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy and a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if the Director has previously ordered the tenant to pay an amount to the landlord and this amount remains unpaid at the end of the tenancy (sections 38(3)(a) and (b)).

The tenants seek the return of double the value of their security deposit of \$550.00, totalling \$1,100.00, from the landlord. I accept the tenants' undisputed evidence at this hearing, as the landlord did not appear. The tenants provided their forwarding address to the landlord on December 15, 2014. The tenancy ended on the same date. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full security deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to double the value of their security deposit of \$550.00, totalling \$1,100.00.

As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,150.00 against the landlord under the following terms:

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the <i>Act</i> ( $\$550.00 \times 2 = \$1,100.00$ )	\$1,100.00
Recovery of Filing Fee for Application	50.00
<b>Total Monetary Order</b>	<b>\$1,150.00</b>

The tenants are provided with a monetary order in the above terms and 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 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 *Residential Tenancy Act*.

Dated: May 27, 2015

---

Residential Tenancy Branch

