



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of their security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend the hearing, which lasted approximately 22 minutes. The tenant JL ("tenant") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses. The tenant confirmed that she had authority to represent her husband, "tenant MN," the other tenant named in this application, as an agent at this hearing.

The tenant confirmed that she personally served the landlord with the tenants' application for dispute resolution hearing package ("Application") on July 26, 2015. In accordance with section 89 of the *Act*, I find that the landlord was served with the tenants' application on July 26, 2015.

### Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary award equivalent to double the value of their deposits 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 their filing fee for this Application from the landlord?

### Background and Evidence

The tenant testified that this tenancy began on March 1, 2014 and ended on June 30, 2015. Monthly rent in the amount of \$775.00 was payable on the first day of each month. The tenant testified that a security deposit of \$387.50 and a pet damage deposit of \$387.50 was paid to the landlord and the landlord only returned \$750.00 total by way of a cheque on July 27, 2015. The tenant confirmed that key deposits totalling \$150.00 were paid to the landlord but that one of the keys was lost by the tenants, so a loss of \$50.00 for one of the key deposits was accepted.

The tenant stated that move-in and move-out condition reports were completed for this tenancy, but the landlord did not provide copies to the tenants. The tenant confirmed that a written forwarding address was provided to the landlord by way of a letter or the move-out condition inspection report on June 30, 2015.

The tenant confirmed that no written permission was provided to the landlord to keep any amount from their deposits. The tenant stated that she was not aware of any application for dispute resolution filed by the landlord to retain any amount from the deposits.

The tenants seek a return of \$100.00 for the key deposits, as well as the return of double their deposits, totalling \$1,550.00, minus the portion already returned in the amount of \$750.00. The tenants state that they are entitled to double the value of their deposits because the landlord failed to return their deposits in full or make an application for dispute resolution, within 15 days of providing a written forwarding address. The tenants also seek to recover the \$50.00 filing fee paid for their Application.

### Analysis

While I have turned my mind to the testimony of the tenant, as no documentary evidence was provided, not all details of the submissions and arguments are

reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' 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 deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenant's undisputed evidence at this hearing, as the landlord did not attend. The tenancy ended on June 30, 2015. Although the tenant could not recall whether she provided a forwarding address on a letter or on the move-out condition inspection report, I accept her testimony that a written forwarding address was provided to the landlord on June 30, 2015.

The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the deposits to the tenants or make an application for dispute resolution to claim against the deposits, within 15 days of the receipt of the written forwarding address. The landlord returned a portion of the deposits on July 27, 2015, more than 15 days after June 30, 2015. In any event, the landlord's right to claim against the deposits for damage was extinguished by sections 24 and 36 of the *Act*, for failure to provide copies of the move-in and move-out condition inspection reports to the tenants. Therefore, I am required to double the value of both deposits as per Residential Tenancy Policy Guideline 17.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to receive double the value of their deposits, totalling \$1,550.00 minus the \$750.00 already returned to the tenants, equalling \$800.00.

I also find that the tenants are entitled to a return of \$100.00 for the key deposits paid. I accept the tenant's undisputed testimony that the landlord did not return the key deposits to the tenants at the end of the tenancy. The tenants initially paid \$100.00 and lost one of the keys and had to pay an additional \$50.00. The tenant acknowledged

that the lost key was due to the tenant's negligence and stated that she accepted \$50.00 should not be returned to the tenants for that reason.

As the tenants were successful in their Application, I find that 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 \$950.00 against the landlord. 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: January 15, 2016

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Residential Tenancy Branch

