



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD OLC 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; an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties (two landlords and two tenants) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The tenants testified that their application to have the landlord to comply with the *Act* relates strictly to the return of the security deposit.

### Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit (and thereby comply with the *Act*)? Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on September 5, 2014 and was for a fixed term of 10 months. The rental amount of \$1860.00 was payable on the first day of each month. The tenant provided evidence that a security deposit of \$1500.00 was paid at the outset of the tenancy (August 15, 2014). The landlord continues to hold the majority of this security deposit, having returned \$450.00 at the end of the tenancy. The tenants sought the return of the remainder of their security deposit and recovery of their filing fee.

The tenants testified that they provided their forwarding address to the landlord on July 15, 2015. They vacated the rental unit on June 30, 2015. The landlords testified that

they returned \$450.00 at the end of the tenancy after sending an email on July 9, 2015 indicating that they will deduct monies from the security deposit for; additional television cable channels added during the tenancy; cleaning at the end of the tenancy; and a broken futon left at the residence as well as “extra costs”. The landlord submitted copies of a television bill and 3 photographs, 2 showing a broken futon. The landlords both testified that they did not file an application for dispute resolution as they believed the tenants were in agreement with the suggested deductions.

Email correspondence between the parties was submitted as evidence for this hearing including the July 9, 2015 email from the landlord. One email dated September 16, 2014 from the tenants to the landlord requesting further channels be added to the cable television package at the rental unit. The tenants write, “I suspect this might mean a different package and cost.” The cable bill submitted by the landlord provides a general breakdown of internet and television but no further information regarding the cost of channels.

### 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 and pet damage 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 deposits, and the landlord must return the tenant’s security 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*).

With respect to the return of the security, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. In this case, the undisputed evidence shows that the landlords were informed of the forwarding address on July 15, 2015 in writing. The landlord had 15 days after July 15, 2015 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.” The tenants both testified that they did not agree to allow the landlord to retain any portion of their security deposit. The email correspondence provided for this hearing does not provide evidence of an agreement between the parties with respect to the security deposit: it merely provides evidence of a discussion regarding the security deposit. As there is insufficient evidence

that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their deposits, I find that section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants seek the return of the remainder of their security deposit still held by the landlords. The landlords did not apply to the Residential Tenancy Branch to retain the tenants' deposits. Given that the landlords have failed to take the appropriate steps regarding the tenants' security deposit in accordance with the *Act*, I find that the tenants are entitled to a monetary order including \$1050.00 for the return of the remainder of their security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would 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.*

Based on the evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' entire security deposit in full within the required 15 days. The tenants both gave testimony that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlords' 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 total monetary order amounting to double the value of their security deposit with any interest calculated on the original amount only. No interest is payable for this period. The amount that has been previously paid to the tenants shall be deducted from the total monetary award.

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the tenants as follows:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit remainder	\$1050.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1500.00
Portion of Deposit Returned to Tenant by Landlord	-450.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2200.00</b>

The tenants are provided with a formal Order in the above terms. Should the landlord(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: October 05, 2016

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Residential Tenancy Branch