



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMBER PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD OLC FF O

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions. The landlord's agent, SG ('landlord's agent'), testified on behalf of the landlord in this hearing and was given full authority by the landlord to do so. The tenants' agent, CY ('tenants' agent'), testified on behalf of the tenants in this hearing and was given full authority by the tenants to do so.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

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 a monetary award for losses arising out of this tenancy?

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

### Background and Evidence

The tenants' agent testified that this periodic tenancy ended on September 28, 2015 when they moved out of the rental suite. Monthly rent was set at around \$720.00, payable on the first of each month. She testified that a security deposit in the amount of \$360.00 was paid in the beginning of the tenancy.

The tenants' agent testified to the following account of what happened from September 2015 to the present. Upon the move out inspection, the property manager advised the tenants that the security deposit refund cheque would be sent to them within two weeks. After not receiving any refund, the tenants contacted the property manager at the end of November 2015, and there was no answer. The tenants were finally able to get a hold of a different property manager, the agent testifying on behalf the landlord in this hearing, in mid-December 2015.

The tenants' agent testified that the tenants were told that the previous property manager did not notify the head office, but they would be receiving a cheque in two weeks. On January 30, 2016, the tenants emailed the new property manager again as no cheque was received. The tenants were then sent a security deposit summary which indicated that a cheque was mailed out to the tenants' forwarding address on January 12, 2016. The tenants waited until February 12, 2016, but no cheque had arrived. They then phoned the property manager numerous times and the main line at the property management company, but received no answer despite leaving messages.

The tenants were finally able to get a hold of the property manager in March 2016 when they were told a message was passed to head office. The tenants followed up with a letter by regular mail to the Property Management company as they still had not received a return of their security deposit. Another formal letter was sent to the property management company on April 30, 2016, after consulting with a lawyer. The letter was sent by email as well as regular mail. They followed up two weeks later by phone call, with no success in receiving the refund. On July 8, 2016, the tenants filed an application for dispute resolution, which resulted in a cheque in the amount of \$360.00 finally being issued on July 19, 2016. The tenants refused to cash the cheque due to

the fact that the matter was now before the Residential Tenancy Branch, and they were applying for compensation including recovery of the filing fee. The tenants' agent said that the tenants were frustrated regarding the delay as the matter had been outstanding for over one year. The tenants are requesting a monetary order in the amount of \$1,040.00, which includes a return of double the security deposit, the \$100.00 filing fee, as well as the cost of missing time off work and the time spent trying to resolve this issue.

The landlord's agent did not dispute that the fact that the security deposit was to be returned to the tenants, and the fact that there was a lot of back and forth. She testified that a cheque was mailed out in January 2016, and assumed that the cheque was received as it was not returned. She testified that they requested a notarized letter from the tenants confirming that the security deposit was never received, which the tenants never provided. The landlord eventually mailed a replacement cheque on July 19, 2016 for \$360.00, which was not cashed by the tenants.

The landlord called one witness who confirmed that he worked at the property management company, and received one phone call from the tenants, after which the issue was passed on to head office. The witness testified that the management company was waiting for the notarized letter as a cheque was previously issued to the tenants.

The tenants testified that they have not received a return of any portion of the security deposit until after this dispute was filed, and did not give written authorization to allow the landlords to retain the security deposit.

### 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 deposit 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*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage 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."

In this case, I find that the landlord has not returned the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave undisputed sworn testimony that the landlord has not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' 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; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period. As the tenants have been successful in his application, I find that the tenants are also entitled to recover their filing fee from the landlord.

The tenants applied for further compensation from the landlord for the time spent in dealing with this matter. Section 72 of the *Act* only allows me to allow the tenants to recover the filing fee, and not the other associated costs of filing a dispute resolution application. Accordingly, I am not granting the tenants' application for further compensation.

During the hearing, the landlord requested the return of the uncashed cheque from the tenants, which the tenants agreed to do as she did not plan on cashing that cheque.

### Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$360.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	360.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$820.00</b>

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

I also order the tenants to return the uncashed security deposit cheque to the landlords.

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 13, 2017

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Residential Tenancy Branch