



# 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 the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant LT confirmed she represented both co-tenants (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The landlord confirmed receipt of the tenants' application package. The tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective application and evidence.

### Issue(s) 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 parties agreed on the following facts. This tenancy started in July, 2016 and ended December 31, 2016. The monthly rent was \$1,100.00 payable on the first of each month. The tenants provided a security deposit of \$500.00 at the start of the tenancy. The parties testified that they performed a move-in inspection at the start of the tenancy. A copy of an addendum to the tenancy agreement May 31, 2016 and unsigned by either party was submitted into written evidence. The addendum provides a list of existing damage to the rental unit.

The tenant testified that the landlord was given the tenants' forwarding address in writing on January 10, 2017. The parties said that the landlord was aware of the forwarding address prior

to this date but agreed that it was provided in writing on January 10, 2017. The landlord confirmed that she was provided the tenants' forwarding address in writing. The parties testified that no condition inspection report was done at the end of the tenancy and the landlord did not contact the tenant in an attempt to arrange a move out inspection together. The tenant testified that the landlord was not given written authorization that he may retain the security deposit.

### Analysis

The Act provides the circumstances in which a landlord may retain a portion or the entirety of a security deposit and the requirement that the landlord obtain the tenant's written authorization or to apply for dispute resolution.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the 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. 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 as per section 38(4)(a).

I find that the tenants provided written notice of the forwarding address on January 10, 2017. I accept the evidence of the parties that the landlord failed to return the full security deposit to the tenant within 15 days of January 10, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period.

If the landlord had concerns arising from the condition of the rental unit, or incurred costs for cleaning the landlord should have addressed these matters within 15 days of receiving a copy of the tenants' forwarding address or within 15 days of the end of tenancy.

It is inconsequential if repairs to the rental unit were required, if the landlord does not take proper action to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to conduct themselves according to the *Act*. The landlord cannot decide to simply keep the damage deposit as recourse for their loss.

In addition, the parties have testified that no condition inspection report was prepared at the end of the tenancy. Section 36 of the *Act* provides that the landlord extinguishes their right to claim against the security deposit if they fail to offer the tenant two opportunities to participate in a move-out inspection and prepare a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. I

accept the tenant's evidence that they have not waived the right to obtain a payment pursuant to section 38 of the *Act* 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 entitled to an \$1,000.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,100.00 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: March 21, 2017

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Residential Tenancy Branch