



# 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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 30 minutes in order to allow both parties to fully present their submissions.

The landlord intended to call a witness, "I," who she said was a neighbour of the tenants during their tenancy, in order to testify that the tenants kept dogs at the rental unit. She said that this was the only evidence that the witness would provide. Pursuant to Rule 3.6 of the Residential Tenancy Branch *Rules of Procedure*, I advised the landlord that the witness' testimony about the dogs was not relevant to this hearing and I did not need to hear from him. Therefore, he did not testify at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package.

At the outset of the hearing, the tenants confirmed that the only orders they were seeking was for a return of double the amount of the security deposit plus the application filing fee.

Accordingly, the tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

### 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

While I have turned my mind to the documentary evidence and the testimony of both parties, 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.

Both parties agreed to the following facts. This tenancy began on September 1, 2014 and ended on August 31, 2016. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants personally provided a written forwarding address to the landlord on October 3, 2016 by way of a letter of the same date. The landlord acknowledged receipt of this letter and provided a copy in her written evidence package. The landlord did not have written permission to keep any amount from the security deposit. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

The tenants seek a return of double the amount of their security deposit, totalling \$1,200.00, because the landlord failed to return it or make an application for dispute resolution. The tenants also seek to recover the \$100.00 filing fee paid for this application.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit 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 security deposit. However, this provision does not apply if the landlord has obtained the tenants' 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 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 make the following findings on a balance of probabilities, based on the undisputed testimony of both parties at this hearing and the written evidence. The tenancy ended on August 31, 2016. The tenants personally provided a written forwarding address to the landlord in their letter, dated October 3, 2016, on the same date and the landlord acknowledged receipt of this forwarding address. Although the tenants said that they provided a forwarding address to the landlord by way of text message within one week of ending their tenancy, text messages are not an

approved method of service under section 88 of the *Act*. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full deposit to the tenants or file an application for dispute resolution to claim against the deposit within 15 days of the forwarding address being provided by the tenants on October 3, 2016.

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* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit, totalling \$1,200.00, from the landlord.

As the tenants were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,300.00 against the landlord. The tenant(s) 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.

The tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

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: April 20, 2017

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Residential Tenancy Branch