



# Dispute Resolution Services

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 their 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 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 landlord confirmed receipt of the tenant's Application for Dispute Resolution and their secondary evidence package. The tenant confirmed receipt of the landlord's evidence package submitted for this hearing.

### Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit? Are the tenants to an amount equivalent to their security deposit for the landlord's contravention of the Act? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on August 1, 2015 for a fixed term of one year and a rental amount of \$2150.00. The tenants vacated the rental unit on October 31, 2016. The landlord confirmed that he retained and continues to hold a security deposit of \$1075.00 paid prior to the outset of the tenancy (July 10, 2015). The tenants have applied to have their security deposit returned and to recover the filing fee for this application.

The tenant PC testified that the tenancy ended when the new landlord took over the property and the parties were unable to agree on the rental amount. The tenant PC testified that he left written notice of his and his co-tenants' forwarding address in the landlord's mail slot on October 30, 2016. The tenant PC testified that when the tenant

and the landlord's son conducted a condition inspection on October 31, 2016, the landlord's son acknowledged receipt of the forwarding address. The landlord confirmed that, as far as he knew this evidence of delivery of the address was accurate although he was not certain of the date that he received the forwarding address.

After the tenants and the landlord were unable to agree on the terms of an ongoing tenancy, the landlord provided a 2 Month Notice to End the Tenancy, relying on the claim that his son intended to reside in the rental unit. At the end of the tenancy, the landlord's son and the tenant PC conducted a condition inspection with a condition inspection report on October 31, 2016. The tenants both testified that there was no deduction to the security deposit discussed on that date. A copy of the condition inspection report was submitted indicating that the unit was left somewhat dirty with some damage. There is no indication in the report that a deduction will be made from the tenants' security deposit.

Both tenants testified that they did not agree, in writing or verbally to any deduction to their security deposit and did not agree that the landlord could retain the deposit. The landlord testified that, at the end of the tenancy, there was significant damage so much so that his son has yet to be able to move into the rental unit. He submitted photographs to demonstrate the condition of the rental unit. The landlord testified that he was not aware that he was required to apply to the Residential Tenancy Branch to retain the tenants' 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 security 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 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. In this case, the landlord was informed by the tenants of their forwarding address in writing by placing it in his mailbox on October 30, 2016. The landlord acknowledged receipt of the forwarding address as did his son on the date of the move-out condition inspection

(October 31, 2016). The landlord had 15 days after October 31, 2016 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 neither of them agreed to allow the landlord to retain any portion of their security deposit. As there is no evidence that either tenant has given the landlord written authorization at the end of this tenancy to retain any portion of the deposit, section 38(4)(a) of the *Act* does not apply to the tenants’ security deposit.

The tenants sought the return of their security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenants’ deposit as required by section 38 of the *Act*. The landlord testified that he was unaware of his obligations with respect to the tenants’ security deposit. The landlord is required to know his obligations under the *Residential Tenancy Act* and accompanying policies. The landlord’s failure to familiarize himself with the applicable law does not affect the nature of his obligation. I find that the tenants are entitled to a monetary order including \$1075.00 for the return of the full amount 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 landlord has not applied for dispute resolution nor returned the tenants’ security deposit in full within the required 15 days.

The tenants both testified that they had not waived their right to obtain a payment pursuant to section 38 of the *Act* owing 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 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.

Having been successful in this application, I find that the tenants are also 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:

Item	Amount
Return of Security Deposit	\$1075.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1075.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2250.00</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: May 17, 2017

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Residential Tenancy Branch