



# 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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 9, 2017. The tenants have provided a copy of the Canada Post Customer Receipt Tracking label as confirmation. The tenants have also stated that an online search of the Canada Post Website shows that the landlord signed in receipt of the package on January 11, 2017. I accept the undisputed affirmed evidence of the tenants and find that the landlord has been properly served as per sections 88 and 89 of the Act.

At the end of the hearing the tenants requested that the decision be mailed to a new mailing address as the tenants have moved from this rental unit since filing this application.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 20, 2015 on a fixed term tenancy ending on May 1, 2016 as per the submitted copy of the signed tenancy agreement dated August 17, 2015. The monthly rent was \$2,600.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,300.00 and a damage deposit of \$1,300.00 were paid.

The tenants seek a monetary claim of \$5,200.00 which consists of:

\$2,600.00	Rental Deposit
\$2,600.00	Rental Agreement section 4 of RTA

The tenants clarified that they were seeking a monetary claim of \$5,200.00 which consist of:

\$1,300.00	Return of Original Security Deposit
\$1,300.00	Return of Furniture Damage Deposit
\$2,600.00	Compensation, Landlord failed to comply with Sec. 38(6) of the Act.

The tenants provided undisputed affirmed testimony that at the beginning of the tenancy the landlord asked for a \$1,300.00 security deposit and a \$1,300.00 Furniture Damage Deposit. The tenants stated that they agreed to this term and paid the landlord the combined amount of \$2,600.00 as per the signed tenancy agreement.

The tenants provided undisputed affirmed testimony that the tenancy ended on April 30, 2016 and that the tenants' forwarding address in writing was provided to the landlord for the return of the Deposits on December 1, 2016 via Canada Post Registered Mail. The tenants stated that permission was not given to the landlords to retain the deposits nor have the tenants been informed of an application for dispute filed by the landlord for authorization to retain it. The tenants stated that as of the date of this hearing the landlord has not returned all or part of the combined deposits.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenants and find that the tenancy ended on April 30, 2016 and that the landlord was provided with the tenants' forwarding address in writing on December 1, 2016.

I note for the record that the tenants sought clarification during the hearing regarding a security deposit and a furniture damage deposit. This was not clear based upon the signed tenancy agreement as it states that a security deposit of \$1,300.00 and a damage deposit of \$1,300.00 were paid.

I find that the landlord has failed to obtain permission from the tenants to retain the deposits and as of the date of this hearing the landlord has failed to return the deposits that the landlord has extinguished his rights to the security and furniture damage deposits. I find that the tenants are entitled to the return of the original security deposit of \$1,300.00 and the furniture damage deposit of \$1,300.00.

I find that the Act only refers to a security deposit and not a damage deposit or a furniture damage deposit. This is clear based upon the listing of the two deposits on the signed tenancy agreement. As such, I find that the tenants are only entitled to compensation under section 38 (6) regarding the original security deposit of \$1,300.00.

The tenants have established a total monetary claim of \$3,900.00.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenants are granted a monetary order for \$4,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: June 23, 2017

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Residential Tenancy Branch