



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Onni Property Management Service Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for return of double the security deposit - Section 38;
3. An Order for the Landlord to comply - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant confirms that they are only seeking return of double the security deposit and the filing fee. As there is no claim for compensation being made and as an order for a landlord’s compliance may only be made during an ongoing tenancy I dismiss these claims.

### Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of their filing fee?

### Background and Evidence

The tenancy started in 2015. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit and \$1,500.00 as a pet deposit. The Tenants moved out of the unit on March 24, 2017.

The Tenant states that they provided their forwarding address in writing on the move-out condition report. The Tenant states that they did not receive return of their full security and pet deposit until April 19, 2017. The Tenant claims return of double the security and pet deposits. The Tenant states that there was considerable confusion on the part of the Landlord about the return of the security deposit and that despite the texts between the Parties the Tenants never agreed to the late return of the security and pet deposits.

The Landlord states that he does not know when the forwarding address was provided. The Landlord states that a cheque for the security and pet deposit was mailed to the Tenant on March 30, 2017. The Landlord states that on April 7, 2017 the Tenant texted the Landlord to inform them that no security deposit had been received. The Landlord states that upon checking with the accounting department it was noted that the cheque had not been cashed. The Landlord states that the envelope and cheque was never returned to the Landlord. The Landlord states that he assumes that the cheque was sent to the forwarding address provided on the move-out report. The Landlord states that there was "a premise" upon which the Landlord would reissue another cheque and the Tenant did not disagree with this premise. The Landlord states that the cheque for \$3,000.00 was mailed to the Tenants on April 13, 2017. The Landlord provides copies of the texts referred to as supporting evidence.

I grant the Tenant an order under Section 67 of the Act for **\$3,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Nothing in the Act provides for a tenant to waive the time requirement for the return of the security

deposit. Section 90 of the Act provides that a document given or served by mail is deemed to be received on the 5<sup>th</sup> day after it is mailed.

Based on the undisputed evidence that the Tenants moved out of the unit on March 24, 2017 and accepting the undisputed evidence of the Tenant that the forwarding address was provided on that same day, I find that the Landlord was required to return the security and pet deposit by April 8, 2017. Although the Landlord's evidence is that they initially returned a cheque for the security and pet deposit by mail on March 30, 2017, there is no evidence of where the cheque was sent or that the cheque was sent to the Tenant in a secure manner such as in person delivery or registered mail. The evidence indicates that on April 7, 2017 the Landlord was informed that no security deposit had been received. Although at this point the Landlord still had time to return the security deposit within the 15 day limit given the Landlord's evidence of when that cheque was mailed I accept that the Tenants did not receive the return of the security deposit until April 19, 2017. I find therefore that the Landlord did not return the security deposit by April 8, 2017 and that the Landlord must now pay the Tenant double the security and pet deposit in the amount of **\$6,000.00**. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,100.00**. Deducting the **\$3,000.00** already returned leaves **\$3,100.00** owed by the Landlord to the Tenant.

### Conclusion

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: September 08, 2017

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Residential Tenancy Branch