



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD MNDC 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;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant, PS, attended the hearing by way of conference call, the landlord did not. I waited until 2:10 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The tenant provided sworn, undisputed testimony that she had served the landlord with the tenants' application for dispute resolution hearing package ("Application") and evidence by way of registered mail on May 15, 2017. The tenants provided a tracking number in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to monetary compensation for the landlord's failure to comply with the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

The tenant, PS, provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This tenancy began on August 1, 2016, with monthly rent set at \$995.00. The landlord had collected a security deposit of \$490.00 and a key deposit of \$100.00, and still continues to hold the deposits. The tenants moved out on January 31, 2017 and provided a forwarding address by way of a letter sent to the landlord on February 17, 2017. The tenant testified that she has not received any response from the landlord, nor has she given permission for the landlord to keep the deposits.

The tenants are requesting the return of their deposits, as well as compensation for the landlord's failure to comply with section 38 of the *Act*.

### **Analysis**

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenants' forwarding address in writing, to either return the deposit 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 deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants 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 tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord did not return the tenants' security and key deposit in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security and key deposit. The tenant gave sworn testimony

that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security and key 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 tenants have 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 tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I find that the landlord has not returned the tenants' security deposit and key deposit within 15 days of the provision of their forwarding address. The tenant, PS, gave undisputed sworn testimony that the landlord had not obtained their written authorization to retain any portion of the deposits. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security and key deposit

As the tenants were successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlord.

### **Conclusion**

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security and key deposit, plus a monetary award equivalent to the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security and Key Deposit	\$590.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	590.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,280.00</b>

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of 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: October 18, 2017

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Residential Tenancy Branch