



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD FF

### Introduction

This hearing was scheduled to hear the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a return of the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Tenant B.R. appeared at the hearing for the tenants, while the landlords were represented by their son, C.B. (the "landlord"). Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant explained that an Application for Dispute Resolution and evidentiary package were sent by way of Canada Post Registered Mail to the landlords on August 10, 2017. The landlord acknowledged that his parents were in receipt of these packages. Pursuant to sections 88 & 89 of the *Act*, I find that the landlords' were duly served with the tenants' application for dispute resolution and evidentiary package.

### Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit? If so, should it be doubled?

Are the tenants entitled to further damages?

Can the tenants recover the filing fee?

### Background and Evidence

The tenant gave undisputed testimony that this tenancy began on July 1, 2014 and ended on June 30, 2017. Rent began at \$1,995.00 per month, and rose to \$2,195.00 throughout the

tenancy. A security deposit of \$997.50 paid at the outset of the tenancy continues to be held by the landlords.

The tenant explained that he was seeking a Monetary Award of \$2,635.00. This amount was reflection of a doubling of the security deposit under section 38 of the *Act*, because the landlords continued to hold his security deposit. Additionally, he explained the tenants were seeking a return of the filing fee associated with the application for dispute, and compensation of \$540.00 for the amount of time the tenant said he spent preparing his application for dispute. The tenant said that he arrived at this figure after concluding that he worked for 12 hours preparing the application. He stated that he was seeking to recover \$45.00 per hour for this time.

During the course of the hearing the landlord acknowledged that his parents had failed to return the tenants' security deposit, but explained that there had been damage to the rental unit and his parents were preparing invoices to try and minimize the cost that the tenants would face for repairs that which were required following the conclusion of the tenancy.

The tenant stated that he had sent the landlords his forwarding address on June 30, 2017 by email and again by regular mail on July 2, 2017, and that the landlords had failed to return his security deposit as directed by section 38 of the *Act*.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's 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. In this case, the value of the security deposit is \$997.50. However, this provision does not apply if the landlord has obtained a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). Under section 38(3)(b) a landlord may retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of being sent a copy of the tenants' forwarding address by Canada Post regular mail on July 2, 2017, or following the conclusion of the tenancy. Section 88 & 90 of the *Act* provides that the mailing address sent to the landlords by regular mail deems the landlords received this address on July 7, 2017.

While I understand and appreciate the landlord's testimony that his parents were attempting to minimize any costs related to damage in the rental unit, they had a responsibility to apply to

retain the tenants' security deposit within 15 days from the end of the tenancy or within 15 days of receiving the tenants' address in writing.

Under section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,995.00, representing a doubling of the tenants' security deposit that has not been returned.

The tenant has also applied for a monetary award of \$540.00 representing the time and efforts he took in preparing the documents associated with this application for dispute. A tenant is only entitled to a monetary order under section 67 of the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in further detail. It notes:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I do not find that the tenant has supplied adequate evidence to establish that he has suffered a loss of \$540.00. The tenants were successful in applying for a doubling of their security deposit and have therefore recovered an award from the landlords for their failure to comply with the *Act*. I find that any further award would be excessive and is not supported by the evidence supplied to the hearing. The tenants' application for compensation related to the time he spent preparing the application is dismissed.

As the tenants were successful in their application, they may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order of \$2,095.00 in favour of the tenants as follows:

Item	Amount
Return of Security Deposit (2 x \$997.50)	\$1,995.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$2,095.00</b>

The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 25, 2017

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Residential Tenancy Branch