



# Dispute Resolution Services

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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 pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Tenant J.P. (the tenant) stated that they would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package that was sent by way of Canada Post Registered mail on September 27, 2017. In accordance with sections 88 and 89 of the Act, I find the landlord has been duly served with the Application and evidentiary package.

The tenant confirmed receipt of the landlord's evidence which was sent to them by way of registered mail November 28, 2017. In accordance with section 88 of the Act, I find the tenants were duly served with the landlord's evidence.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit?

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

### Background and Evidence

The landlord gave written evidence that this tenancy began on August 01, 2017, with a monthly rent of \$1,098.00 due on the first day of each month. The landlord testified that the tenants paid a security deposit in the amount of \$550.00 that the landlord currently retains.

The tenants provided a copy of a Condition Inspection Report dated August 28, 2017, signed by the landlord and the tenant. The Condition Inspection report indicated the tenants' forwarding address to return the security deposit to. The tenants indicated that they did not allow for any deductions of the security deposit on the report.

The tenant testified that they moved out of the rental unit on August 28, 2017, and that the landlord did not return the tenants' security deposit. The tenant stated that they are seeking double the security deposit back from the landlord as the landlord did not file their own application for dispute resolution to keep the security deposit or a portion of it.

The landlord testified that they thought they had a good relationship with the tenants. The landlord stated that the tenant gave verbal notice in August of 2017 for the tenancy to end on August 28, 2017. The landlord submitted that she was engaged in discussions with the tenant on retaining a portion of the security deposit due to the tenants not giving adequate notice to end their tenancy and was surprised when she received the notice of hearing documents.

### Analysis

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

I find the landlord was duly served with the tenants' forwarding address on the Condition Inspection report on August 28, 2017, the same date that the tenancy ended. I find there is no evidence to show that the landlord had the tenants' agreement in writing or that the landlord applied for dispute resolution within 15 days of the end of the tenancy to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

Pursuant to section 38 (6) of the Act, I find that the landlord must pay the tenant double the security deposit.

Having made the above findings, pursuant to section 67 of the Act, I find that the tenants are entitled to a monetary award of \$1,100.00, comprised of double the security deposit (2 x \$550.00).

The landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

As the tenants have been successful in their application, I allow the tenants' request to recover their filing fee.

### Conclusion

The tenants are successful in their Application.

Pursuant to section 67 of the Act, I grant a monetary Order in the tenants' favour in the amount of \$1,200.00 for double the security deposit and to recover the \$100.00 filing fee from the landlord.

The tenants are provided with this Order in the above terms and the landlord must be served with 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 Orders 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: December 20, 2017

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Residential Tenancy Branch