



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FFT

### Introduction

This reconvened hearing was scheduled to address the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for the return of their security deposit and amount equivalent to their security deposit pursuant to section 38; and their filing fee pursuant to section 72.

On the original hearing date (December 13, 2017) the application was adjourned in order to allow the tenants an opportunity to provide evidence of service of their Application for Dispute Resolution package (including Notice of this Hearing) to the landlord(s). The tenants' application to adjourn was granted as a result of a series of extenuating circumstances prior to the hearing.

The tenant who gave the evidence at this hearing ("the tenant") testified that they served the landlords with their Application for Dispute Resolution ("ADR") by registered mail. They provided the Canada Post tracking information with a date of December 20, 2017. The tenant testified that they served the interim decision made after the first hearing as well as the new Notice of Hearing. The tenant testified that, out of an abundance of caution, they sent their Application package by registered mail again on January 3, 2018. The tenant also provided Canada Post tracking information for the mailing on this date. Based on the evidence submitted by the tenant and the testimony at this hearing, I find that the landlords were sufficiently served with the tenants' ADR on December 25, 2017 and again on January 8, 2017.

The landlords did not attend this hearing, although I waited until 3:14 p.m. in order to enable the landlords to connect with this teleconference hearing scheduled for 3:00 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to their application.

### Issue(s) to be Decided

Are the tenants entitled to recover their security deposit?

Are the tenants entitled to an additional amount equivalent to their security deposit for the landlords' failure to comply with the Act?

Are the tenants entitled to recover their filing fee?

### Background and Evidence

This tenancy began on October 28, 2016 and continued until the tenants vacated the rental unit on March 31, 2017. The tenants testified that \$2400.00 was payable on the first day of each month. The tenant provided evidence that a security deposit of \$1200.00 was paid at the outset of the tenancy. The tenant provided a carbon copy of their cheque provided to the landlords for the security deposit. The tenant testified that the landlords had their forwarding address when they moved out of the residence but, again out of an abundance of caution, they provided their forwarding address to the landlords by mail on or about April 21, 2017.

The tenant testified that the landlords have not returned their \$1200.00 security deposit paid at the outset of the tenancy. The tenant testified that, at the end of the tenancy, they agreed to pay \$100.00 for carpet cleaning and their portion of an outstanding hydro bill in the amount of \$149.00. The tenant testified that the landlord sent the tenants with an extensive list (including cleaning carpets, repairs and painting) itemizing why they intended to retain the security deposit. The tenant submitted a copy of the correspondence from the landlord as well as their response to the list. The tenant testified that, at the end of the tenancy, the tenants hired cleaners to clean the unit and those repairs to the unit should not have been necessary as a result of their tenancy. The tenant testified that the landlords provided them with the extensive list of costs ("the letter") in May 2017. The tenants testified that they do not agree with the claims of the landlord for damage and cleaning as set out in the letter.

The tenant testified that the landlords were not available to conduct a condition inspection at move-out until two weeks after the tenants vacated the rental unit. The tenant testified that at the time of the inspection, the landlord was already using the unit as an office for his home business. Ultimately, the tenants sent their son and daughter in law to conduct the condition inspection with the landlord as the tenants were both struggling with health issues. The tenant testified that their son did not agree to sign the condition inspection report at the end of the move-out inspection. The landlords did not apply to retain the tenants' security deposit as of the date of this hearing.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full 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 tenant 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 tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address by regular mail on April 21, 2017. The landlord had 15 days after April 21, 2017 (May 6, 2017) to take one of the actions outlined above. With respect to the tenants' application for dispute resolution, I find that the tenants sufficiently served the landlords with the Notice of this hearing so that they would know the date, time of this hearing as well as the nature of the hearing.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant who gave evidence at this hearing testified that neither he nor his wife agreed to allow the landlord to retain any portion of their security deposit. As there is no evidence that the tenants gave the landlords written authorization at the end of this tenancy to retain any portion of the deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants seek the return of both their security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenants' deposit and did not attend this hearing in support of that application. I have already indicated that I find there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Therefore, I find that the tenants are entitled to a monetary order including \$1200.00 for the return of the full amount of their security 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 tenant has 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 tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the testimony and the evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenant gave testimony that neither he nor his wife or their other representative (their son) has waived their right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a total monetary order amounting to double the value of their security deposit (\$2400.00 total) with any interest calculated on the original amount only. No interest is payable for this period.

I find that the tenants' monetary award should be reduced by \$249.00 – the costs the tenant agreed to pay the landlord for cleaning carpets (\$100.00) and an outstanding hydro bill (\$149.00).

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in favour of the tenants as follows:

Item	Amount
Return of Security Deposit (sd) (\$1200.00 sd – \$249.00 agreed for landlord= \$951.00)	\$951.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	951.00
Recovery of Filing Fee for this Application	100.00

<b>Total Monetary Order</b>	<b>\$2002.00</b>
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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 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: January 31, 2018

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Residential Tenancy Branch