



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### 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 the security deposit pursuant to section 38; and
- authorization to recover the tenants' filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to be heard, to present evidence, and to make submissions.

The tenant HM testified for the tenants. The tenant testified that the application for dispute resolution dated September 22, 2017 and all evidentiary materials were served on the landlord by registered mail on September 23, 2017. The tenant submitted a Canada Post tracking number as evidence in support of service. The landlord stated she had received the registered mail although she could not recall the date. Pursuant to sections 88, 89 and 90 of the Act, I find that the tenants' application package was deemed served on the landlord on September 27, 2017.

As a preliminary matter, the landlord stated her surname was incorrectly spelled as "Sissons" in the documents. She testified the correct spelling of her name is "Sison". The parties agreed that the documents in this proceeding be amended accordingly to reflect the correct spelling of the landlord's surname.

### Issue(s) to be Decided

- Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?
- Is the tenant entitled to recover the filing fee of this application from the landlord?

### Background and Evidence

The landlord and the tenant agree on the following. The parties signed a fixed term tenancy agreement on May 4, 2017 for a 3-month term from June 1, 2017 to August 31, 2017 at a rental of \$2000 a month payable on the first day of each month.

On May 5, 2017, the tenants provided a security deposit in the amount of \$1000.00 to the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

Before the end of June 2017, the tenants delivered a written one-month notice that because of unsatisfactory conditions such as noise, they were vacating the unit one month before the end of the term, that is, by July 31, 2017.

The tenants moved by the end of July 2017 and did not pay rent for the month of August 2017. On August 3, 2017, the tenants provided notice in writing to the landlord of their forwarding address for the return of the security deposit. The landlord has not returned the security deposit and the tenants have not provided written authorization that the landlord may retain any portion of the \$1000.00 security deposit.

The landlord submitted that the tenancy agreement was not at an end until August 31, 2017 and the tenant must pay rent for the month of August. Therefore, the landlord submits she is entitled to keep the security deposit as partial compensation for unpaid rent.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that at no time has the landlord brought any proceedings with respect to nonpayment of rent nor has she brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*. Therefore, I need not consider whether the tenancy was properly terminated at the end of July or August 2017.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act* and that the landlord was given written notice of a forwarding address on August 3, 2017.

In addition, the tenant testified and the landlord agreed that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
...  
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the start of the tenancy.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a Monetary Order in the amount of \$2000.00, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants' application was successful, I also find that they are entitled to recover the \$100.00 filing fee for this application.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,100 against the landlord. The tenant is provided with a Monetary 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: April 20, 2018

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Residential Tenancy Branch