



# 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:

- a monetary Order for the return of a security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant J.P. testified that she served the landlord with the notice of dispute resolution package by registered mail between the end of September and the beginning of October 2017. The tenants did not provide the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the dispute resolution package via registered mail sometime between the end of September and the beginning of October 2017. I find that the landlord is deemed served with this package in accordance with sections 71, 88 and 89 of the *Act*.

### Issue(s) to be Decided

- Are the tenants entitled to the return of their security deposit pursuant to section 38 of the *Act*?
- Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2016 and ended on September 1, 2017. Monthly rent in the amount of \$875.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. On September 1, 2017 tenant J.L. agreed to allow the landlord to retain \$200.00 from the tenants' security deposit to pay for the cleaning of the rental unit.

On September 1, 2017, the landlord accused the tenants of causing damage to the rental unit and requested that she be permitted to retain more of the tenant's security deposit. Tenant J.L. told the landlord to "do what you need to do- just send what's remaining in a cheque" and provided the tenants' forwarding address in writing. At the hearing Tenant J.P. denied that the tenants damaged the rental unit.

The landlord did not send the remainder of the security deposit to the tenants within 15 days after receiving the tenants' forwarding address in writing. Sometime after September 17, 2017 the landlord sent the tenants a cheque for \$132.00. The landlord testified that in addition to the \$200.00 tenant J.L. explicitly allowed the landlord to retain, she retained a further \$168.00 from the security deposit to pay for damages to the rental unit.

Tenant J.P. testified that the tenants brought this application because they believed that the landlord deducted too much from their security deposit and did not return their deposit within 15 days from when they provided their forwarding address in writing to the landlord.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a 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 deposit (the "doubling provision").

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising

out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on September 1, 2017. Tenant J.L. gave the landlord permission to retain \$200.00 from the security deposit. The landlord did not return the security deposit or make an application for dispute resolution to claim against it within 15 days of receiving the tenants' forwarding address in writing. The landlord returned \$132.00 from the tenants' security deposit to the tenants after the 15 days set out in section 38 of the *Act* and retained \$368.00: \$200.00 authorized by Tenant J.L. plus \$168.00 for alleged damages to the rental unit.

I find that the tenants did not authorize the landlord to retain more than \$200.00 from the security deposit. While tenant J.L. testified that he told the landlord "do what you need to do- just send what's remaining in a cheque", I find that this is not an explicit authorization to retain a further \$168.00 from the security deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive \$468.00, as per the below calculation:

\$500.00 (security deposit) – \$200.00 (amount tenants agreed landlord could retain) X 2 (doubling provision) – \$132.00 (amount landlord returned to tenants) = \$468.00

Although the tenants did not apply to obtain a return of double the deposit, they did not specifically waive their right to it. Accordingly, I must consider the doubling provision as per Residential Tenancy Policy Guideline 17.

As the tenants were wholly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$568.00 against the landlord. The tenants are 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: May 02, 2018

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Residential Tenancy Branch