



# 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 the balance of their security deposit and an amount equivalent to their security deposit pursuant to section 38 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, service of documents was confirmed. The parties confirmed that the tenants' Notice of Dispute Resolution Proceeding package was served on the landlord by registered mail on October 4, 2018. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application.

### Issue(s) to be Decided

Are the tenants entitled to recover the balance of 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

The parties agreed on the following facts. This one-year fixed-term tenancy began on August 1, 2016 and continued until the tenants vacated the rental unit on July 31, 2017.

The monthly rent was \$1,500.00 payable on the first day of each month. The tenants paid a security deposit of \$775.00 at the commencement of the tenancy.

The tenants have applied for a monetary award of \$950.00 as compensation for the following:

Item	Amount
Return of portion of security deposit withheld by landlord without tenants' written authorization for cleaning costs	\$75.00
Monetary compensation for landlords' failure to comply with s. 38 of the <i>Act</i> (equivalent to value of security deposit)	775.00
Recovery of filing fee for this Application	100.00
<b>Total monetary compensation requested by tenants</b>	<b>\$950.00</b>

The tenants testified that on August 1, 2017, they sent an email to the landlord advising her to send their security deposit cheque to the rental unit address as they had not set up "an account" but had arranged mail forwarding to have mail sent to their new address.

The landlord responded via email on August 7, 2017 asking the tenants if they were "okay" with her deducting \$75.00 from their security deposit to cover cleaning costs, and requesting them to provide her with their new address, not the rental unit address, as this was her understanding of the requirements for return of the security deposit under the *Act*.

The tenants responded by email within a few hours to dispute the landlord's request to withhold a portion of the security deposit for cleaning costs, and to provide an address where the landlord could send the security deposit as their new address was not yet "established".

The tenants explained at the hearing that they were building a new home and they had not yet been provided with the official address by the municipality, which is why they stated their new address was not yet "established". However, the tenants testified that they provided an acceptable address and confirmed for the landlord that she should send the security deposit cheque to the provided address.

The landlord stated that her understanding of the *Act* requires the tenants to provide her with a "legally established" forwarding address in order for her to return the security

deposit, and it is her position that the address they provided to her was not yet “established”, as noted in their own words, hence why she did not feel compelled to send the cheque until she felt she had confirmed this information.

The landlord submitted into documentary evidence a receipt for cleaning costs in the amount of \$75.00 which she claims was required to return the rental unit to the same level of cleanliness as when the tenants originally took possession of the unit.

Both parties confirmed that the landlord sent the tenants a cheque for \$700.00 on or around September 2, 2018 as a return of the security deposit less cleaning costs in the amount of \$75.00.

### 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 tenant’s security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit pursuant to 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 writing. In this case, the landlord was first informed by the tenants via email on August 1, 2017 to send the security deposit to the rental unit address as it would be forwarded to their new address.

When this was questioned by the landlord on August 7, 2017, the tenants provided a different address, by reply email on the same day. Although it would have been sufficient for the tenants to have asked the landlord to return the security deposit to them by sending it to the rental unit address, they chose to provide a different address to the landlord.

While the landlord raised concerns that the tenants had not provided her with a “legally established” forwarding address, it should be noted that the *Act* only requires the tenants to provide an address where they want their mail sent. As such, it could be the

rental unit address, if the tenants have arranged to have their mail forwarded, or any other address where Canada Post delivers mail that the tenants provide. It was not necessary for the landlord to wait until the tenants' new home had a mail delivery address.

For the purposes of determining the triggering event date, I find that the tenants provided the landlord with their forwarding address on August 7, 2017. The landlord had 15 days after August 7, 2017 to take one of the actions provided by section 38 (1) of the *Act*, as outlined above. The landlord failed to take either of the available actions within the allowable time limit, which in this case was August 22, 2017.

I note that the tenants provided their forwarding address to the landlord using email, instead of through one of the acceptable methods for providing written notice as set out in section 88 of the *Act* provided below:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
  - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
  - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
  - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
  - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
  - (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (j) by any other means of service prescribed in the regulations.

However, section 71(2)(c) of the *Act* allows me to determine if a document not served in accordance with section 88 of the *Act* is “sufficiently given or served for purposes of this *Act*.” Since the landlord replied to the tenants’ email messages and confirmed receipt of the address provided by the tenants, I find that landlord was sufficiently served with the tenants’ forwarding address pursuant to section 71(2)(c) of the *Act*.

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 tenants testified that they did not agree to allow the landlord to retain any portion of their security deposit. As there is no evidence that the tenants gave the landlord 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.

Based on the testimony and the evidence 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. Further, I find that the tenants did not provide written authorization for the landlord to withhold any portion of the security deposit.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order equivalent to the value of their security deposit, plus the return of the portion of the security deposit withheld by the landlord without authorization, with any interest calculated on the original amount only. No interest is payable for this period.

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 portion of security deposit withheld by landlord without tenants’ written authorization	\$75.00
Monetary award for landlords’ failure to comply with s. 38 of the <i>Act</i> (equivalent to value of security deposit paid)	775.00
Recovery of filing fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$950.00</b>

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: May 8, 2018

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Residential Tenancy Branch