



# 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* ("Act") for:

- authorization to obtain a return of their security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open for 14 minutes in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant A.V. (the "tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that he served the landlord with the tenants' Application for Dispute Resolution hearing package ("Application") on October 11, 2017 via registered mail. The tenant provided a Canada Post tracking number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' Application on October 16, 2017, the fifth day after its registered mailing.

I note that 8 days before the hearing the landlord uploaded a carpentry invoice. No one attend the hearing on the landlord's behalf.

### Issue(s) to be Decided

1. Are the tenants entitled to a return of their security deposit?

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

### Background and Evidence

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

The tenant testified that this tenancy began on July 1, 2017 and ended on August 31, 2017. Monthly rent in the amount of \$2,250.00 was payable on the first day of each month. A security deposit of \$1,125.00 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.

The tenants submitted into evidence a letter dated July 25, 2017 which provided the landlord with notice to end the tenancy effective August 31, 2017. The letter also provided the landlord with the tenants' forwarding address and requested that the landlord return the tenants' security deposit to the forwarding address provided. The tenant testified that this letter was sent to the landlord via e-mail on July 25, 2017 and was followed up with a telephone call to the landlord on the same date. The tenant testified that in the telephone call, the tenants requested that the landlord send their security deposit to the forwarding address provided and the landlord agreed. The tenant testified that after July 25, 2017 the landlord stopped answering their texts, calls and e-mails and did not return the security deposit.

### 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 security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security 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 tenants 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 the tenant. The tenancy ended on August 31, 2017. The tenants provided the landlord with their forwarding address in writing on July 25, 2017 via e-mail. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address is sufficiently served pursuant to section 71(2) of the *Act* because the tenant confirmed the landlord's receipt of the forwarding address in a telephone call on the same date. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

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 \$2,250.00, which is double the security deposit. 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 pursuant to section 72 of the *Act*.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$2,350.00 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 10, 2018

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Residential Tenancy Branch