



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### 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.

Both parties attended the hearing and were given full opportunity to be heard, present evidence and make submissions. The tenant PK made submissions on behalf of the tenants.

The landlord agreed he had received the Notice of Hearing and all evidentiary materials from the tenants. I find the landlord has been sufficiently served pursuant to the Section 71(2)(b) of the *Act*.

### Preliminary Matter

As a preliminary matter, the landlord stated his correct name is "Sumit Arora". The parties agreed the documents in this proceeding be amended accordingly to reflect the correct name of the landlord.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

The landlord and the tenants agree on the following. The parties entered a month to month tenancy agreement starting August 1, 2017 for rent of \$1,200.00 a month

payable on the first day of each month. On August 1, 2017, the tenants provided a security deposit in the amount of \$600.00 to the landlord.

The tenants moved out of the unit on September 30, 2017. On September 30, 2017, the tenants provided notice in writing to the landlord of their forwarding address for the return of the security deposit. The parties testified the tenants have not provided written authorization the landlord may retain any portion of the security deposit.

The landlord submits he is entitled to keep the security deposit as compensation for damages to the unit. The landlord has not returned the security deposit or any part of it to the tenants. The landlord testified he has not filed an application to retain any portion of the security deposit.

### 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 receipt of the tenants' 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 tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought any proceedings with respect to nonpayment of rent nor has he brought an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the parties evidence the tenants have not waived their right to obtain a payment pursuant to section 38 of the *Act* and the landlord was given written notice of a forwarding address on September 30, 2017.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a Monetary Order of \$1,200.00. No interest is payable over this period.

Conclusion

The tenants are entitled to a Monetary Order in the amount of \$1,200.00. This Order must be served on the landlord. If the landlord fails to comply with this Order the tenants may file the order in the Provincial Court (Small Claims) and be 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: June 01, 2018

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Residential Tenancy Branch