



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On April 20, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the return of his security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlords attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlords testified that they received each others documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlords?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The undisputed testimony was that the tenancy began on March 7, 2016, as a month to month tenancy. Rent in the amount of \$900.00 was to be paid by the first day of each month, and the Tenant paid the Landlords a \$450.00 security deposit (the deposit). It was also agreed that the Tenant gave verbal notice to the Landlords to end his tenancy, on March 5, 2018, and the Tenant moved out of the rental unit on March 17, 2018. Both parties agreed that the Tenant had given short notice to end his tenancy; however, it

was confirmed by the Landlords that they entered into a tenancy agreement with a new renter effective April 1, 2018, and there had been no loss of rental income.

The Tenant testified that JR attended the rental unit on March 16, 2018, and conducted a walk-through inspection with the Tenant, no formal move-out inspection document was completed at this time. The Tenant testified that he asked JR to do the official move-out inspection with him on March 17, 2018, but JR declined. The Tenant testified that he provided the Landlords with his forwarding address, via text message, on March 21, 2018, and that at no time had he give the Landlords written or verbal permission to keep his deposit.

The Landlords testified that they had received the Tenant's forwarding address; however, they did not return the deposit to the Tenant due to damage to the rental unit. The Landlords testified that they did not complete the written move-out inspection, and that they had believed it was understood that the Tenant had forfeited his deposit due to the Tenant's short notice to end his tenancy and the amount of damage to the rental unit. The Landlords also testified that they did not have a written agreement with the Tenant to retain the deposit, nor had they file an Application for Dispute Resolution claiming against the deposit.

### Analysis

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on March 17, 2018, the date the tenant moved out and that the Landlords received the Tenant's forwarding address on March 21, 2018. Accordingly, the Landlords had until April 4, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. The Landlords, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlords breached section 38 (1) of the *Act* by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory time line.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

### **Return of security deposit and pet damage deposit**

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven their entitled to the return of double the security deposit. I find for the Tenant, in the amount of \$900.00, granting a monetary order for the return of double the security deposit.

As the Tenant has been successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlords have breached section 38 of the *Act*, as they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a Monetary Order in the amount of \$1,000.00 for the return of double the security deposit, and for the recovery of the filing fee for this application. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: June 7, 2018

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Residential Tenancy Branch