



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of a security deposit and the recovery of the filing fee paid for this application.

One of the Tenants and her daughter were present at the hearing (the “Tenants”) and were affirmed to be truthful in their testimony. No one called in for the Landlord during the approximately 20 minute hearing.

As the Landlord was not present, service of the Notice of Dispute Resolution Proceeding documents was addressed. The Tenants testified that the hearing documents, along with a copy of their evidence, were sent to the Landlord by registered mail on April 24, 2018. The tracking number for this package was provided in evidence and is included on the front page of this decision as the first tracking number. Entering the tracking number on the Canada Post website shows that the package was not picked up and was returned as unclaimed to the Tenants on May 15, 2018.

The Tenants testified that the address where the package was sent is the Landlord’s address that was listed on the tenancy agreement and where mail has been claimed previously. I accept that the Notice of Dispute Resolution Proceeding documents were duly served by the Tenants. I also note that failure to claim or accept mail is not a ground for review under the *Act*.

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.

### Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order for the return of the security deposit?

### Background and Evidence

The Tenants provided undisputed testimony regarding the tenancy. The tenancy began on November 20, 2016 and was for a fixed term tenancy of one year. After the fixed term ended, the parties signed a new tenancy agreement for a fixed term of four months, ending March 20, 2018. Both tenancy agreements were submitted in evidence.

Monthly rent in the amount of \$3,400.00 was due on the 21<sup>st</sup> day of the month. A security damage deposit in the amount of \$1,700.00 was paid at the outset of the tenancy. No pet damage deposit was paid. The Tenants testified that the Landlord is still in possession of the full security deposit amount.

The Tenants gave notice to the Landlord on January 10, 2018 that they would be moving out on February 20, 2018. This notice was given by text message and a photo of the text message was submitted in evidence.

The Tenants testified that there was no condition inspection report completed on move-in or move-out. When they moved out, the Tenants stated that they walked through the rental unit and property with the Landlord, but that no report was signed. The Tenants testified that they did not provide permission for the Landlord to withhold any amount from the security deposit.

The Tenants provided their forwarding address to the Landlord by email as well as by registered mail. The letter with the forwarding address, dated March 7, 2018, was submitted in evidence. The Tenants also submitted the registered mail tracking number for their forwarding address and this is included on the front page of this decision as the second tracking number. The registered mail package was signed for by the Landlord on March 12, 2018.

### Analysis

Based on the undisputed testimony and evidence of the Tenants, I accept that the Landlord was provided with the Tenants' forwarding address on March 12, 2018 by registered mail.

Section 38(1) of the *Act* states that a landlord has 15 days after the later of the end of tenancy date or the date the forwarding address is provided in writing to either repay the security deposit or apply for dispute resolution to claim against the security deposit. In the absence of any evidence showing that the Landlord has filed a claim against the security deposit, I find that the Landlord did not comply with Section 38(1) of the *Act*.

In accordance with Section 38(6) of the *Act*, if a landlord does not comply with Section 38(1), they may not claim against the security deposit and must pay the tenant double the amount of the security deposit.

Pursuant to the above, I find that the Tenants are entitled to the return of double the security deposit for an amount of \$3,400.00. As the Tenants were successful in their application, I also award the recovery of the filing fee paid for this application in the amount of \$100.00 for a total Monetary Order of \$3,500.00.

### Conclusion

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of \$3,500.00 for the return of double the security deposit and for the recovery of the filing fee for this application. 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: June 07, 2018

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Residential Tenancy Branch