



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*;
- authorization to recover a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenants and their advocate, M.L. attended the hearing. The attending parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants' advocate stated that the tenants served a copy of their application for dispute, along with their evidentiary package to the landlord by way of Canada Post Registered Mail on November 20, 2017. A copy of the Canada Post Registered Mail tracking number was provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act* the landlord is found to have been served with the tenants' evidentiary package and application for dispute on November 25, 2017, five days after their posting.

### Issue(s) to be Decided

Can the tenants recover their security deposit? If so should it be doubled?

Are the tenants entitled to a monetary award including a return of their filing fee?

### Background and Evidence

Undisputed testimony was provided by the tenants that this tenancy began on September 1, 2016 and ended on May 31, 2017. Rent was \$1,450.00 per month and a security deposit of \$725.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants said they were seeking a monetary award of \$2,900.00 from the landlord. The tenants argued that the landlord had failed to return their security deposit and should therefore be subject to the penalty provision as prescribed by section 38 of the *Act*. The tenants explained that they sent a copy of their forwarding address to the landlord by way of Canada Post Registered Mail on October 17, 2017; however, no deposit was ever returned to the forwarding address provided. A copy of the Canada Post Tracking number was provided to the hearing.

In addition to a return of double their security deposit, the tenants are seeking a monetary award of \$1,450.00 representing a month's worth of compensation which they argued they were due under the *Act*. The tenants said that the landlord asked them to vacate the rental unit via a Facebook message in the Spring of 2017. They said that they accommodated this request and received no compensation. The tenants sought compensation because the landlord took possession of the rental unit for personal unit without having offered them proper notice or compensation.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's 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 and or upon receipt of the tenant's 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. In this case, the landlord received the tenants forwarding address in writing by Canada Post Registered Mail on the corrected effective date of October 22, 2017. The landlord therefore had until November 5, 2017 to apply for dispute resolution or return the tenants' security deposit. However, this provision does not apply if the landlord has obtained a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find no evidence that the landlord applied to retain the tenant's security deposit within 15 days of the conclusion of the tenancy or following receipt of the tenants' forwarding address. I find the landlord must therefore pay the tenants a monetary award that is equivalent to double the value of the security deposit, or \$1,450.00.

In addition for a return of their security deposit, the tenants have applied for a monetary award of \$1,450.00 in satisfaction for compensation related to the landlord having taken the rental unit for his own personal use.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

The tenants argued that they received a message from the landlord on Facebook in the Spring of 2017 asking them to move, and informing them that he wished occupy the rental unit. The tenants said they were not offered any compensation for accommodating this request.

Section 51 of the *Act* states, "a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement." After considering the testimony of the tenants, and after having reviewed the evidence submitted at the hearing, I find no evidence that the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants acknowledged during the hearing that they vacated the suite after receiving a Facebook message from the landlord. The tenants were under no obligation to vacate the suite following receipt of such a message and I find that they moved out of the rental unit under their own volition. The tenants are therefore prevented from receiving compensation for having vacated the rental unit.

As the tenants were successful in their application, they may pursuant to section 72 of the *Act* recover the \$100.00 fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,450.00 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.

<b>Item</b>	<b><u>Amount</u></b>
Return of Security Deposit (2 x 725.00)	\$1,450.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$1,550.00</b>

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 20, 2018

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Residential Tenancy Branch