



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC MNSD FF

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlord sought:

- a monetary order for loss, damage and money owed 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*.

The tenants sought:

- a return of the filing fee pursuant to section 72 of the *Act*;
- a monetary order for loss or other money owed pursuant to section 67 of the *Act*; and
- a return of the security deposit pursuant to section 38 of the *Act*.

Only the tenants attended the hearing. The tenants were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenants acknowledged receipt of the landlord's application for dispute and said that they served the landlord with their application for dispute and evidentiary package by way of Canada Post Registered Mail on November 3, 2017. Pursuant to sections 88, 89 & 90 of the *Act* the landlord is deemed served with these documents on November 8, 2017, five days after their posting.

### Issue(s) to be Decided

Is either party entitled to a monetary award?

Can the tenants recover the filing fee?

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

### Background and Evidence

Undisputed testimony was provided to the hearing by the tenants that this tenancy began in September 2016 and the tenants vacated the rental unit on April 25, 2017. Rent was \$1,350.00 per month, and a security deposit of \$675.00, collected at the outset of the tenancy continues to be held by the landlord. A \$75.00 fob deposit continues to be held by the landlord.

The tenants explained that they are seeking a monetary award of \$2,100.00 representing a return of their security deposit with the appropriate penalty under section 38 of the *Act* applied, along with a return of rent for June 2017 which they say was incorrectly collected by the landlord following the conclusion of their tenancy, and a return of their \$75.00 fob deposit.

The tenants said that they vacated the rental unit on April 25, 2017 and met the landlord's agent in front of the building. No condition inspection report was performed by the parties and they returned all keys and fobs to the landlord's agent on April 25, 2017. The tenants continued by noting that a series of post-dated cheques were provided to the landlord at the start of the tenancy, and that five cheques remained in the landlord's possession at the conclusion of the tenancy. The tenant said that despite efforts to cancel these cheques, the landlord was able to cash the rent cheque for June 2017 in its entirety. The tenants sought a return of these funds.

Undisputed oral testimony was provided by the tenants that they sent an email to the landlord with their forwarding address on October 20, 2017. The landlord responded to this email on October 25, 2017.

No oral testimony was provided to the hearing by the landlord, and only limited written evidence was submitted.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet 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 or pet deposit. However, this provision does not apply if the landlord has obtained the 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.

The tenants explained that they provided their forwarding address to the landlord on October 20, 2017. The landlord therefor had until November 4, 2017 to return their security deposit or

apply for dispute resolution. A review of the landlord's application for dispute reveals that he applied for a monetary award on October 26, 2017 but did not apply to retain the tenants' security deposit on this date. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have included an application to retain the security deposit, along with his application for a monetary award.

Pursuant to section 38 of the *Act*, I find that the tenants are entitled to a monetary award of \$1,350.00 representing a doubling of their security deposit which continues to be held by the landlord. I accept the tenants' undisputed testimony that all keys and fobs were returned to the landlord's agent on April 25, 2017 and order the landlord to return the \$75.00 deposit to the tenants for the fob deposit.

The tenants have also applied for a monetary award of \$1,350.00 representing a rent cheque of \$1,350.00 for June 2017, which they said was cashed by the landlord despite the tenancy ending in April 2017.

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 monetary award.

After reviewing the evidence submitted at the hearing, and after having considered the tenants' oral testimony, I find it evident that the landlord cashed a cheque for \$1,350.00 representing June 2017, following the conclusion of the tenancy. If the landlord had concerns arising about issues related to the tenancy, the landlord should have attended the hearing and explained those concerns related to their application for dispute. It is not sufficient to cash a cheque for a future rent which may or may not be due. The tenants are entitled to a return of the funds related to June 2017 rent which was prematurely cashed.

As the tenants were successful in their application, they may pursuant to section 72 of the *Act*, recover the associated filing fee.

No testimony was presented by the landlord, and only limited written evidence was submitted. The landlord's application is dismissed in its entirety.

### Conclusion

I issue a Monetary Order of \$2,875.00 in favour of the tenants as follows:

Item	Amount
Return of Security deposit per section 38 (2 x 675.00)	\$1,350.00
Return of June 2017 rent	1,350.00
Return of FOB deposit	750.00
Recovery of Filing Fee	100.00
<b>Total =</b>	<b>\$2,875.00</b>

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.

The landlord's application is dismissed in its entirety without leave to reapply.

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 4, 2018

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Residential Tenancy Branch