



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

On May 22, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the return of their security deposit. The matter was set for a conference call.

The Tenants attended the conference call hearing. The Tenants were affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified the Application for Dispute Resolution, and Notice of Hearing documents were personally served on the Landlord, at the Landlord's business office, on May 23, 2018. I find that the Landlord has been duly served in accordance with the Act.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 Landlord?
- Are the Tenants entitled to the return of their Security Deposit?

### Background and Evidence

The testimony of the Tenants was that the tenancy began on June 1, 2016, as a month to month tenancy. Rent in the amount of \$1,500.00 was to be paid by the first day of each month and that the Tenants had paid the Landlord a \$700.00 security deposit (the deposit) at the beginning of the tenancy. The Tenants provided a copy of the tenancy agreement into documentary evidence.

The Tenants testified that the Landlord served them with a Two Month Notice to end the tenancy for the Landlord's Use of the Property (the Notice) on March 1, 2018. The Tenants testified that they move out in accordance with that notice on April 30, 2018. The Tenants testified that they were present for the move-out inspection, and had not agreed to the Landlord keeping the deposit.

The Tenants testified that they provided the Landlord with their forwarding address in writing on May 3, 2018. The Tenants provided a copy of the written letter that they personally served to the Landlord that provided their forwarding address into documentary evidence. The Tenants testified that the Landlord had not served them with an application to show the Landlord had filed for dispute resolution requesting to keep their security deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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 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 the Tenants ended their tenancy on April 30, 2018, and provided their forwarding address to the Landlord as required under the *Act* on May 3, 2018. This means that the Landlord had until May 18, 2018 to either return the Tenants security deposit in full or make a claim against the deposit.

I find that the Landlord had withheld the Tenants security deposit without the consent of the Tenants and failed to make an application for dispute resolution claiming against the deposit, as required by the *Act*.

At no time does the Landlord have the ability to simply keep any portion of the deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenants are unable to agree to the repayment of the deposit or to deductions to be made to it, 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 the deposit, based on unproven claims.

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 Tenants have successfully proven they are entitled to the return of double the security deposit, as their security deposit was not repaid within the legislated time limit nor did the Landlord apply to retain the deposit as required.

I find for the Tenants, in the amount of \$1,400.00, and am granting a monetary order for the return of double the security deposit.

Conclusion

I find that the Landlord has breached section 38 of the *Act*, failing to repay the security deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 of the *Act*. I grant the Tenants a Monetary Order in the amount of \$1,400.00 for the return of double the security deposit. 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: July 9, 2018

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Residential Tenancy Branch