



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- a return of the security deposit under Section 38; and
- reimbursement of the filing fee under Section 72.

The tenant attended the hearing and provided affirmed testimony. The tenant was given the opportunity to make submissions as well as present oral and written evidence. The landlords did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled for ten minutes to allow the Landlords the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code for the landlords had been provided.

The tenant testified the landlords were served with the Notice of Hearing and Application for Dispute Resolution by leaving a copy with the landlords in their residence on December 29, 2017. I find the landlords are served with the documents pursuant to Section 89 of the *Act*.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because of the landlords' failure to comply with the provisions of Section 38 of the *Act*?
- Is the tenant entitled to reimbursement of the filing fee under Section 72 of the *Act*?

## Background and Evidence

The tenant provided affirmed testimony as follows:

- The parties entered into a residential tenancy agreement starting June 1, 2016 for rent of \$1,750.00 a month payable on the first day of each month;
- At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$875.00 and a pet deposit in the amount of \$337.50, for a total of \$1,212.50, together called the 'deposits';
- The tenant vacated the premises on November 15, 2017;
- The tenant provided the landlord with a forwarding address contained in the Condition Inspection Report on moving out, a copy of which was submitted as evidence;
- The tenant did not authorize the landlord in writing to keep any part of the deposits;
- The landlord has not returned the deposits.

## Analysis

I have reviewed all evidence and testimony before me meeting the requirements of the rules of procedure. However, I refer to only the relevant facts and issues in this decision.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in Section 38 of the *Act*, the landlord is required to either return the 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 receipt of the tenants' forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit. Section 38(6)(b) states as follows:

- (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

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a). Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the Act.

There was no evidence to show the tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the landlords had applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant to retain a portion of the security deposit as required under Section 38.

The tenant is entitled to reimbursement of the filing fee pursuant to Section 72.

Conclusion

Having made the above findings, I Order, pursuant to Section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$2,525.00** comprising double the security deposit (2 x \$1,212.50) and the \$100.00 fee for filing this Application.

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 09, 2018

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Residential Tenancy Branch