



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”) and the recover the cost of the filing fee for the claim.

The tenant attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 5, 2017, Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

Further, the landlords submitted evidence this further supports the landlords’ were aware of the hearing scheduled on this day and failed to attend.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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

### Issues to be Decided

Are the tenants entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The tenancy began on September 2013. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenants.

The tenant testified that they vacated the premises on October 30, 2017. The tenant stated that they provided the landlord with a written notice of the forwarding address on their written notice to end tenancy and again in written when they vacated the premises on October 2017.

The tenant testified that they received a portion of the Deposit in December 2017, after they filed their application in the amount of \$305.63. The tenant stated that the cheque was dated November 10, 2017. The tenant stated they did not authorize the landlords to retain any amount from the security deposit. The tenant stated that they did not cash the cheque because of the outstanding hearing and it is likely stale dated now.

### Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

#### **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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on two occasions; the latest was on October 30, 2017. I find the landlords had 15 days from the end of the tenancy which ended on October 30, 2017, to comply with section 38 of the Act.

I accept the undisputed testimony of the tenant that they did not agree in writing that the landlord may retain any amount from the Deposit.

I find the landlords have breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlords were not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$1,000.00**, comprised of double the Deposit (\$450.00) and to recover the \$100.00 fee for filing this Application.

In most circumstance, when a partial payment of the Deposit is returned, that amount would be deducted from the above amount. However, in this case the tenants did not cash the partial payment of their Deposit and it more likely than not that the cheque would not be cashable as it is at least six (6) months old.

Therefore, I order the tenants to return to the landlords the cheque they received with a copy of this decision and order, or alternatively the landlords may place a stop payment. The landlords are required to pay to the tenants' the amount listed above forthwith.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

### Conclusion

The tenants' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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 16, 2018

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Residential Tenancy Branch