



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence. Both parties also confirmed receipt of the landlord's submitted documentary evidence. As both parties have attended and confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that a signed tenancy agreement was made on May 1, 2016 to begin the tenancy on May 15, 2016 for a 1 year fixed term ending on May 15, 2017.

Both parties agreed that the monthly rent was \$1,000.00 payable on the 1<sup>st</sup> day of each month. Both parties agreed that a \$500.00 security deposit was paid. No Pet Damage Deposit was paid. A condition inspection report for the move-in was completed by both parties on May 15, 2016.

The tenants seek a total monetary claim of \$600.00 for:

\$500.00	Return of Original Security Deposit
\$100.00	Recovery of Filing Fee

Both parties agreed that the tenancy ended on September 1, 2017 when the tenants vacated the rental space and returned the keys to the landlord. Both parties agreed that the tenants paid a \$500.00 security deposit and that a written request for the return of the security deposit was given to the landlord on September 1, 2017. Both parties agreed that permission was not given to the landlord to retain the security deposit nor did the landlord file an application to dispute its return to the tenants.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I find based upon the undisputed affirmed evidence of both parties that the tenancy ended on September 1, 2017 and the tenants' provided their forwarding address in writing to the landlord for return of the \$500.00 security deposit. Both parties confirmed in their direct testimony that permission to retain the security deposit was not given by the tenants nor did the landlord apply for dispute of its return. On this basis, I find that the tenants are entitled to return of the \$500.00 security deposit.

Further, I find that as the landlord fail to comply with section 38 (1) of the Act, the landlord is subject to section 38 (6) where the landlord is required to pay the tenants an amount equal to the security deposit of \$500.00.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,100.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 24, 2018

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Residential Tenancy Branch