



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On May 21, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the return of her security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlords attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlords testified that they received each others documentary evidence that I have before me.

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 Landlords?
- Is the Tenant entitled to a monetary order for the return of her security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 13, 2018, as a six-month fixed term tenancy. Rent in the amount of \$1,750.00 was to be paid by the first day of each month, and the Tenant paid the Landlords an \$875.00 security deposit (the deposit). Both parties agreed that the Tenant had given notice to end the tenancy early, and had moved out on May 4, 2018.

The Tenant testified that she attended the rental unit on May 4, 2018, and participated in the move-out inspection with the Landlord. The Tenant testified that she did not agree to any deduction to her security deposit during the move-out inspection. The Tenant also testified that she provided the Landlords with her forwarding address, via text message, on May 21, 2018, and that at no time had she give the Landlords written or verbal permission to keep her deposit.

The Landlords testified that they had received the Tenant's forwarding address; however, they did not return the deposit to the Tenant due to a letter they had received notifying them that they may be fined up to \$5,000.00 due to some illegal downloading that had taken place on their internet account. The Landlord testified that they believe it was the Tenant who had illegally downloaded a show on their internet account. The Landlord testified that as of the date of this hearing, they had not actually received a fine. The Landlord testified that they are still holding the full deposit from the Tenant just in case they do get that fine.

The Landlords testified that they did not have a written agreement with the Tenant to retain the deposit, nor had they filed an Application for Dispute Resolution claiming against the 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 security 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 this tenancy ended on May 4, 2018, the date the tenant moved out and that the Landlords had received the Tenant's forwarding address on May 21, 2018. Accordingly, the Landlords had until June 5, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. The Landlords, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, 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 of the deposit, based on unproven claims.

I find that the Landlords breached section 38 (1) of the *Act* by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory timeline.

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 Tenant has successfully proven she is entitled to the return of double the security deposit. Additionally, I find that the Landlord ought to have known that the full amount of the security deposit was due. Therefore, pursuant to section 64(3) of the *Act*, I am amending the Tenant's claim to \$875.00, the full amount of the security deposit paid at the outset of this tenancy.

I find for the Tenant, in the amount of \$1,750.00, granting a monetary order for the return of double the security deposit.

As the Tenant has been successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I find that the Landlords have breached section 38 of the *Act*, as they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a Monetary Order in the amount of \$1,850.00 for the return of double the security deposit, and for the recovery of the filing fee for this application. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 27, 2018

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Residential Tenancy Branch