



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FFT

### 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 the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The tenant appeared and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the tenant's application for dispute resolution dated April 26, 2018 was served on the landlord by registered mail on that date. The tenant provided a Canada Post tracking number as evidence of service. Based on the undisputed evidence I find that the landlord was deemed served with the tenant's application and evidence on May 1, 2018, five days after mailing, in accordance with sections 88, 89 and 90 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 and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenant provided undisputed testimony regarding the following facts. This fixed term tenancy began on February 1, 2018. A security deposit of \$1,400.00 and pet damage deposit of \$1,400.00 were paid at the start of the tenancy and are still held by the landlord. The parties participated in a move-in inspection and an condition inspection report was signed at the start of the tenancy.

The tenant moved out of the rental unit at the end of March, 2018. The tenant provided the landlord with a forwarding address in a letter dated March 28, 2018. The parties participated in a move-out inspection and a condition inspection report was prepared. The tenants did not authorize the landlord to make deductions from their deposits in the inspection report.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. 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 and pet damage deposit as per section 38(4)(a).

I accept the tenant's undisputed evidence that the tenant provided written notice of the forwarding address by a letter dated March 28, 2018. I accept the undisputed evidence of the tenant that the landlord failed to return the full security deposit and pet damage deposit to the tenant within 15 days of March 28, 2018, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit and pet damage deposit during that period.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenant's security deposit and pet damage deposit in full or file an application claiming against the amount within the 15 days of March 28, 2018, provided under section 38(1)(c) of the *Act*. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants

are entitled to a \$5,600.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application they may also recover the \$100.00 filing fee.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$5,700.00 under the following terms, which allows the tenant to recover their security deposit, the pet damage deposit and the filing fee for their application:

Item	Amount
Double Security Deposit	\$2,800.00
Double Pet Damage Deposit	\$2,800.00
Filing Fees	\$100.00
<b>Total Monetary Order</b>	<b>\$5,700.00</b>

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: October 30, 2018

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Residential Tenancy Branch