



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This decision pertains to the tenants' application for dispute resolution made on June 21, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek monetary orders for the return of their security deposit and for the recovery of the filing fee, pursuant to sections 38(1) and 72(1) of the Act, respectively.

A dispute resolution hearing was convened at 1:30 p.m. on October 23, 2018. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord did not attend.

The tenants testified that they served the landlord with a Notice of Dispute Resolution Proceeding package (the "Notice") by Canada Post registered mail on June 21, 2018. They further testified that the landlord received, or picked up, the Notice on June 27, 2018. Based on the evidence of the tenants, I find that they served the landlord pursuant to and in compliance with section 89(1)(c) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

### Issues

1. Are the tenants entitled to a monetary order for the return of their security deposit?
2. Are the tenants entitled to a monetary order for the recovery of the filing fee?

### Background and Evidence

The tenants testified that they commenced a tenancy on March 1, 2014, and that the tenancy ended on June 30, 2016. Monthly rent, due on the first of the month, was in the amount of \$2,150.00. The tenants paid a security deposit in the amount of \$1,075.00. There was no pet damage deposit.

At, and after, the end of the tenancy, the tenants provided their forwarding address to the landlord by text message in an effort to obtain the return of their security deposit. They were unsuccessful. On August 10, 2016, the tenants provided their forwarding address to the landlord by registered mail. The tenants further testified and confirmed that there was no written agreement between the parties permitting the landlord to retain any or all of the security deposit.

Submitted into evidence by the tenants in support of their claim were the following documents: a copy of a written tenancy agreement, receipts for the security deposit and first month of rent, a monetary order worksheet, and, Canada Post documentation confirming that the landlord received the tenants' forwarding address.

At approximately seven minutes into the hearing, an individual not party to this application called into the hearing seeking information about her hearing, scheduled a few weeks away. According to her, there are "rather terrible windstorms" in Australia and she was concerned about being able to dial in. The tenants kindly waited for me to assist this individual, who then left the hearing. The hearing concluded at 1:44 p.m.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the tenants are making a claim for compensation for the return of their security deposit.

Section 38(1) of the Act states as follows:

Except as provided in subsection (3) of (4) (a), within 15 days after the later of

- (a) the date the tenancy ends,
  - (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.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In this case, I find that the tenants have established on a balance of probabilities that the landlord received the tenants' forwarding address in writing on August 10, 2016. Second, there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit. Third, the tenants testified that there was no agreement in writing between the parties permitting the landlord to retain any amount from the security deposit.

As such, taking into consideration all the oral and documentary evidence and undisputed testimony of the tenants, I find that the landlord did not comply with section 38(1) of the Act, and I therefore grant the tenants a monetary award for the return of their security deposit.

Further, section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord failed to return the security deposit in compliance with section 38(1) of the Act, I further find that the landlord must pay the tenants double the amount of the security deposit for a total of \$2,150.00.

As the tenants were successful in their application, I grant them a monetary award in the amount of \$100.00 for the recovery of the filing fee.

Pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of \$2,250.00.

Conclusion

I hereby grant the tenants a monetary order in the amount of \$2,250.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is final and binding, except as otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 24, 2018

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Residential Tenancy Branch