



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FFT

### **Introduction**

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2016, and ended on January 15, 2018. Monthly rent was set at \$2,250.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$1,126.00 and a pet damage deposit in the amount of \$562.50, which they still hold.

The tenants testified that the landlords failed to return their security deposit as required by section 38 of the *Act*. The tenants provided the landlords with their forwarding address on January 31, 2018 by email, which the landlord confirmed receipt of. The landlords did not dispute that they did not return the tenants' deposits, nor did they file an application for dispute resolution.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find that the landlords had not returned the tenants' security deposit in full within 15 days of receipt of the tenant's forwarding address in writing, or within 15 days of from the date the tenancy had ended. There is no record that the landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security and pet damage deposit.

I find that the tenants are entitled to recover the filing fee for this application.

**Conclusion**

I issue a **\$3,477.00** Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the security deposit and pet damage deposit retained by the landlords, plus a monetary award equivalent to the value of their deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

| <b>Item</b>  | <b>Amount</b>     |
|--|-------------------|
| Return of security & pet damage deposit                        | \$1,688.50        |
| Compensation for landlord's failure to return security deposit | 1,688.50          |
| Filing Fee   | 100.00            |
| <b>Total Monetary Order</b>                                    | <b>\$3,477.00</b> |

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: September 26, 2018

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Residential Tenancy Branch