



# 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 an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under Section 38; and
- Reimbursement of the filing fee under Section 72.

The tenant and landlords attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

No issues of service were raised. The landlords acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. The tenant acknowledged receipt of the landlords' materials. I find the landlords were served pursuant to section 89.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because of the landlords' failure to comply with the provisions of Section 38 of the *Act*?
- Is the tenant entitled to reimbursement of the filing fee under Section 72 of the *Act*?

### Background and Evidence

The parties provided affirmed testimony that they entered a fixed term tenancy starting November 1, 2016 for one year which continued thereafter on a month-to-month basis. The tenancy ended at the end of February 2017.

The parties testified that rent was \$700.00 a month payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$350.00.

The tenant testified he did not provide any written authorization to the landlords to keep the security deposit.

The tenant provided his forwarding address to the landlords by registered mail dated January 3, 2018. The tenant provided the Canada Post tracking number in support of service which is referenced on the first page of this decision. The landlords acknowledge receipt of the forwarding address from the tenant on January 8, 2018.

The landlords did not make an application for dispute resolution with respect to the security deposit. The tenant applied for Dispute Resolution on February 5, 2018.

The parties agree the landlords sent the tenant a cheque for \$275.00 as partial return of his security deposit. The cheque was dated January 20, 2018 and the tenant acknowledged receipt on February 8, 2018. The tenant has not cashed the cheque. He testified he was concerned that cashing the cheque signified he was accepting a lesser amount than the amount to which he believed he was entitled. The landlords have not cancelled the cheque.

Only the first page and the signatory page of tenancy agreement were submitted in evidence. The form is not a standard form, but is one developed by the landlords for their own use.

The landlords submitted a copy of an invoice for cleaning of the unit after the tenant left in the amount of \$75.00. They claim they are entitled to retain \$75.00 from the security deposit. This claim is based on a purported provision in the tenancy agreement which states the tenant is responsible for "reasonable cleaning expenses" when he vacates.

The page containing the section on cleaning expenses was not submitted. However, the tenant read aloud the section during the hearing, and the parties agreed this provision was contained in the agreement.

No condition inspection was conducted on moving in or moving out.

The tenant disputes that any cleaning was necessary when he left the unit. He states he was available on the last day of the tenancy for a walk-through but instead became embroiled in an altercation with one of the landlords and left before this could take place. He testified that any cleaning necessary was because the landlords were showing the unit and created dirt themselves by bringing in prospective tenants.

### Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlords are required to either return the tenant's security 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlords must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

- (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

However, this provision does not apply if the landlords have obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the tenant provided his forwarding address in writing pursuant to section 38(1)(b) which is deemed received under section 90 on the fifth day after mailing, that is, January 8, 2018.

I find the landlords have not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant did not provide consent to the landlords to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlords are in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

As the tenant is successful in this application, he is entitled to reimbursement of the filing fee pursuant to section 72.

The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security deposit	\$350.00
Double the security deposit	\$350.00
Reimbursement of the filing fee	\$100.00
<b>Monetary Award Tenant</b>	<b>\$800.00</b>

As the parties agreed the tenant received the sum of \$275.00 as partial reimbursement of the security deposit, I grant the tenant a monetary order in the amount of **\$525.00** calculated as follows:

ITEM	AMOUNT
<b>Monetary Award Tenant</b>	<b>\$800.00</b>
(Less amount received by tenant from landlords)	(\$275.00)
<b>Monetary Order Tenant</b>	<b>\$525.00</b>

It is irrelevant whether the tenant cashed the cheque for the partial return of the security deposit. He may do so at any time.

The landlords submitted testimony about the condition of the rental unit needing cleaning after the end of the tenancy and the expense they incurred.

The landlords are unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

### **2.1 Starting an Application for Dispute Resolution**

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlords must file their own application to keep the deposit within the 15 days of certain events, as explained above.

The landlords may still file an application for alleged cleaning costs.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I order, pursuant to Section 38 and 67 of the *Act*, that the landlords pay the tenant the sum of **\$525.00**.

Conclusion

I order the landlords pay to the tenant the sum of **\$525.00** pursuant to sections 38 and 72 of the *Act*. The landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the 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 21, 2018

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Residential Tenancy Branch