



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALSTAR MANAGEMENT PARTNERSHIP AND GARY HAMMONDS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNSD FF

### **Introduction**

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. on September 18, 2018. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony/affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference. The landlord confirmed they had received the tenant's forwarding address in writing in January 2018 and the tenant vacated in February 2018. The landlord confirmed that they were served with this Application by registered mail. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Only the landlord, respondent, attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The landlord confirmed the following facts:

1. The tenancy commenced April 15, 2016,
2. Current rent was \$1140 a month and a security deposit of \$550 and a pet damage deposit of \$570 were paid.

3. The tenant vacated the unit on or about February 4, 2018 after giving one month Notice to End their tenancy on February 28, 2018. They provided their forwarding address in writing on January 21, 2018.
4. The landlord had a transfer of management and some computer glitches so the tenants' security and pet damage deposits were not mailed (by UPS) until March 20, 2018.
5. The female tenant was not listed on the directory in her new building so the delivery service had problems.
6. After contacting the tenants, the landlords arranged for the deposits plus \$100 for the filing fee to be sent to the male tenant's workplace and he confirmed receipt on March 28, 2018.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached..

**Analysis:**

I find In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later 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 deposits or file an application to retain the deposits. 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 pay the tenant double the amount of the security deposit (section 38(6)).

I find the weight of the evidence is that the landlord has returned the security and pet damage deposit in full plus \$100 for the tenants' filing fee. As the tenants may have decided not to pursue their claim further and did not attend the hearing to support their claim, I dismiss their claim without leave to reapply.

**Conclusion:**

I dismiss the tenants' application without leave to reapply.

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 18, 2018

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Residential Tenancy Branch