



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security or pet deposit, pursuant to section 38 of the *Act*,
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenants appeared at the hearing. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants explained that the application for dispute and evidentiary package were sent to the landlords by way of Canada Post Registered Mail. A copy of the Canada Post Registered Mail receipt was provided to the hearing. This receipt showed that the tenants sent their application for dispute and evidentiary package to the landlords on January 2, 2018. Pursuant to sections 88, 89 & 90 of the *Act*, the landlords are deemed served with these documents on January 7, 2018, five days after their posting.

### Issue(s) to be Decided

Can the tenants recover the pet and security deposit? If so, should it be doubled?

Can the tenants recover the filing fee?

### Background and Evidence

Undisputed testimony provided by the tenants explained this was a fixed term tenancy agreement which was set to run from July 15, 2017 to July 15, 2018. The tenants said they entered a mutual agreement to end tenancy with the landlords on January 1, 2018. Rent was \$1,400.00 per month, and deposits of \$700.00 (security) and \$350.00 (pet) were paid at the outset of the tenancy. The tenants said the landlords continue to hold both of these deposits.

The tenants explained they did not provide the landlords with written permission to withhold any portion of their deposits and said they provided the landlords with their forwarding address on a separate piece of paper when they sent their application for dispute on January 2, 2018.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet 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, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on January 7, 2018, or following the conclusion of the tenancy on January 1, 2018. If the landlords had concerns arising from the tenancy, the landlords should have applied for dispute resolution to retain the security deposit.

Pursuant to section 38 of the *Act*, I find that the tenants are entitled to a monetary award of \$2,100.00 representing a doubling of the tenants' deposits which the landlord continues to hold.

As the tenants were successful in their application, they may recover the \$100.00 filing fee associated with this application

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,200.00 against the landlords. This amount includes a return of the security and pet deposits with the penalty provision included and a return of the filing fee. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 4, 2018

---

Residential Tenancy Branch