



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### 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 pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:42 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m.

The tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant C.P. (the tenant) indicated that they would be the primary speaker for the tenants.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

**Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package were sent by way of Canada Post Registered mail on March 09, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. In accordance with sections 88, 89 and 90 of the Act, I find the landlord was deemed served with the Application and an evidentiary package on March 14, 2018.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit?

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

Background and Evidence

The tenant provided a copy of the tenancy agreement which shows that this tenancy began on September 01, 2017, with a monthly rent in the amount of \$1,200.00, due on the first day of each month. The tenancy agreement indicates a security and pet deposit totalling in the amount of \$1,200.00.

The tenant also provided in evidence:

- A copy of the letter containing the tenants' forwarding address that was provided to the landlord by registered mail on February 02, 2018, with a picture of the registered mailing which shows the Tracking Number to confirm this registered mailing;
- A copy of a Monetary Order Worksheet outlining the tenants' monetary claim of a registered mailing in the amount of \$9.45 and the tenants' security deposit in the amount of \$1,200.00; and
- A copy of a bank statement showing an electronic transfer of funds in the amount of \$1,200.00.

The tenant testified that they moved out of the rental unit on January 31, 2018, and that the landlord did not return the tenants' security deposit. The tenant stated that they are seeking double the security deposit back from the landlord as the landlord did not file their own application for dispute resolution to keep any portion of the security deposit and did not have the tenants' agreement in writing to keep it.

The tenant gave undisputed affirmed testimony that their forwarding address was provided to the landlord by registered mail on February 02, 2018.

Analysis

In regards to the tenants' monetary claim regarding the cost of the registered mailing, I find that this is not an expense incurred due to the landlord's violation of the Act,

regulations or tenancy agreement as registered mailing is the method of service chosen by the tenants. For this reason, I dismiss the tenants' claim to recover the cost for the registered mailing of this hearing, without leave to reapply.

Having reviewed the documentary evidence and undisputed testimony, in accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' forwarding address on February 07, 2018, five days after its' registered mailing.

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Since I have found the landlord was deemed served with the tenants' forwarding address on February 07, 2018, I find that the landlord was obligated to obtain the tenants' written consent to keep the security deposit or to file an Application on or before February 22, 2018, 15 days after receiving the tenants' forwarding address.

I find that there is no evidence provided to show that the landlord had the tenants' agreement in writing to keep the security deposit or that the landlord applied for dispute resolution within 15 days of receiving the tenants' forwarding address to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Pursuant to sections 38 (6) and 67 of the *Act*, I find that the landlord must pay the tenants double the security deposit as they have not complied with section 38 (1) of the *Act*.

I find that the tenants are entitled to a monetary award of \$2,400.00, which is comprised of double the security and pet deposit (\$1,200.00 X 2) plus applicable interest. There is no interest payable over this period.

As the tenants have been successful in their application, I allow the tenants' request to recover their filing fee.

The landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

### Conclusion

The tenants are successful in their Application.

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenants' favour in the amount of \$2,500.00 for double the security deposit and to recover the \$100.00 filing fee from the landlord.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 09, 2018

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Residential Tenancy Branch