



# 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 their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's advocate (the landlord) confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on July 12, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Tenant GD (the tenant) said that they forwarded their written evidence to the landlord with the original hearing package. Although the landlord testified that they had not received the tenants' written evidence, the landlord confirmed that they had a copy of the unsigned Residential Tenancy Agreement (the Agreement) for this tenancy that they had provided to the tenants at the beginning of this tenancy. As this was the tenants' only written evidence that had a bearing on the matter properly before me, I proceeded on the basis that the landlord was sufficiently aware of the Agreement, the only relevant written evidence provided by the tenants. The landlord did not submit any written evidence for this hearing.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of the security deposit for this tenancy? Are the tenants entitled to a monetary award equivalent to the amount of the

security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

Although the Agreement was neither signed, dated, nor properly filled out, the parties agreed that the terms of this Agreement included the tenants' monthly payment of \$1,800.00 in rent, payable in advance for the period from August 15, 2017 until July 31, 2018. The landlord continues to hold the tenants' security deposit paid on July 25, 2017.

The tenant testified that about a month before they vacated the rental unit they told the landlord that they would be vacating the rental unit by June 1, 2018. The tenant said that the landlord advised that this was alright and that no further notification would be required from the tenants. The parties agreed that the tenants did not provide the landlord with a written notice to end this tenancy.

The tenant said that the tenants vacated the rental unit on June 1, 2018. The landlord said that the tenants did not vacate the rental unit until June 3, 2018. The parties agreed that the last monthly rent paid by the tenants for this tenancy was in May 2018, and which looked after the tenants' rental of the suite until May 31, 2018.

The landlord confirmed that the tenants' accountant sent the landlord the tenants' forwarding address for the purposes of obtaining a return of their security deposit. The landlord confirmed having received the tenants' forwarding address on June 17, 2018. The landlord testified that they had not received the tenants' written authorization to retain the tenants' security deposit. The landlord has not applied to retain the tenants' security deposit, nor has the landlord returned any portion of that deposit to the tenants.

The landlord said that they did not receive monthly rent from the tenants for June 2018, and were unable to re-rent the premises to other tenants until July 2018. The landlord also testified that damage arose during this tenancy for which the tenants were responsible.

### 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 security deposit in full 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 tenant 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. In this case, the landlord had 15 days after June 17, 2018 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." As there is no evidence that the tenants have given the landlords written authorization at the end of this tenancy to retain any portion of their security deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;...*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. There is no evidence that the tenants have waived any of their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of their \$900.00 security deposit with interest calculated on the original amount only. No interest is payable.

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants an award of double their security deposit and the recovery of their filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$900.00 x 2 = \$1,800.00)	\$1,800.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,900.00</b>

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders 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: November 01, 2018

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Residential Tenancy Branch