



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “*Act*”) for the return of the security deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the teleconference hearing, while no one called in for the Landlord during the approximately 17-minute hearing. The Tenant was affirmed to be truthful in her testimony.

The Tenant stated that the Notice of Dispute Resolution Proceeding package, along with a copy of her evidence was sent to the Landlord by courier. She confirmed that the courier required a signature upon delivery. As the package was not claimed by the Landlord, it was returned to the Tenants.

The Tenants submitted the delivery information showing that the package was sent through courier on June 5, 2018, and was returned to the sender on June 19, 2018, after it was not claimed. The tracking number is included on the front page of this decision.

I find that the Landlord was duly served with the Notice of Dispute Resolution Proceeding package and the Tenants’ evidence in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Are the Tenants entitled to the return of the security deposit?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Tenant provided undisputed testimony regarding the tenancy. The tenancy began on December 1, 2017, although the Tenants moved in a day early on November 30, 2017. The Tenants moved out on April 30, 2018.

Monthly rent during the tenancy was \$950.00, but was increased to \$1,150.00 for the last month of the tenancy due to the Tenants' request to stay an additional month. A security deposit of \$475.00 was paid at the outset of the tenancy.

A receipt from the Landlord, dated November 18, 2017, was submitted into evidence stating that \$475.00 was paid for the security deposit, and confirming monthly rent at \$950.00.

The Tenant testified that they provided their forwarding address in a letter dated May 15, 2018, which was given to the Landlord in person on the same day. The letter was submitted into evidence.

The Tenant stated that they did not agree in writing to any deductions from their security deposit, and have not yet received any amount back. The Tenants submitted text messages into evidence in which they asked the Landlord as to when they would be receiving the deposit back.

### Analysis

I refer to Section 38(1) of the *Act* which states the following:

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.

I find no evidence before me that the Landlord applied for Dispute Resolution regarding the security deposit. I accept that the Tenants' forwarding address was provided on May 15, 2018, and therefore find that the Landlord had 15 days from this date in which to return the deposit.

As the Landlord did not file a claim against the deposit, or return the deposit within 15 days, I find that they did not comply with Section 38(1) of the *Act*. Therefore, I find that Section 38(6) of the *Act* applies, and the Tenants are entitled to the return of double their security deposit.

As the Tenants were successful in their Application, I also award the recovery of the filing fee paid in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Tenants are granted a Monetary Order in the amount of \$1,050.00; double their \$475.00 security deposit, as well as the \$100.00 filing fee.

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,050.00** for the return of double the security deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

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 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: November 14, 2018

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Residential Tenancy Branch