



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on July 10, 2018. The tenants seek a monetary order for the return of their security and pet damage deposits pursuant to sections 38(1) and 67 of the Act, and, a monetary order for the recovery of their filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on November 23, 2018 and one of the tenants attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord did not attend,

The tenant testified that the Notice of Dispute Resolution Proceeding package (the "Notice") was served by Canada Post registered mail on July 13, 2018 to the landlord. The tenant provided me with the tracking numbers. I find that the tenants served the landlord with the Notice in compliance with section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

### Issues to be Decided

1. Are the tenants entitled to a monetary order for the return of their security and pet damage deposit?
2. Are the tenants entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The tenant testified that the tenancy commenced on June 1, 2016 and ended on May 31, 2018. Monthly rent was \$2,300.00 and the tenants paid a security deposit of

\$1,150.00 and a pet damage deposit of \$100.00. A copy of the written tenancy agreement was submitted into evidence.

The tenants provided their forwarding address in writing on page two of the move-out Condition Inspection Report. This was provided to the landlord on May 31, 2018. A copy of the page on which the forwarding address was given to the landlord was not readable by my computer software, but I accepted the tenant's testimony in this regard.

The tenant confirmed that there was no written agreement between the parties by which the landlord could retain any or all of the security or pet damage deposits.

Finally, the tenant testified that the landlord returned \$1,150.00 to the tenants 35 days after the end of the tenancy.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the tenants claim that the landlord failed to return the tenants' security and pet damage deposit in compliance with the Act.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage 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.

In this case, I find that the tenants have established on a balance of probabilities that the landlord received the tenants' forwarding address in writing on May 31, 2018, and there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit. The tenant testified that there was no agreement in writing between the parties permitting the landlord to retain any amount from the security deposit.

As such, taking into consideration all the oral and documentary evidence and undisputed testimony of the tenants, I find that the landlord did not comply with section 38(1) of the Act, and I therefore grant the tenants a monetary award for the return of their security deposit.

Further, section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord failed to return the security deposit in compliance with section 38(1) of the Act, I further find that the landlord must pay the tenants double the amount of the security deposit for a total of \$2,500.00, minus the \$1,150.00 that the landlord returned to the tenants past the period permitted by the Act, for a total of \$1,350.00.

Finally, as the tenants were successful in their application, I grant them a monetary award in the amount of \$100.00 for the recovery of the filing fee.

### Conclusion

I grant the tenants a monetary order in the amount of \$1,450.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 23, 2018

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Residential Tenancy Branch