



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for monetary order for the return of their security deposit and the recovery of the cost of the filing fee.

The tenants attended the hearing which was held by teleconference and gave affirmed testimony. The tenants were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), the application, and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on August 2, 2018 and provided a registered mail tracking number in evidence, which has been included on the cover page of this decision for ease of reference. The tenants testified that the registered mail package was successfully delivered to the landlord's community mailbox on August 7, 2018.

Based on the undisputed evidence before, and pursuant to section 90 of the *Act*, I find the landlord was successfully served as of August 7, 2018. As the landlord did not attend the hearing, I find the tenants' application to be undisputed by the landlord.

### Preliminary and Procedural Matters

The tenants included the email addresses for both parties in their application. As a result, the decision will be emailed to both parties and any applicable order(s) will be emailed to the appropriate party.

In addition to the above, the tenants stated that they were not waiving their right to double the return of their security deposit under the *Act* if they were so entitled.

### Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2015 and reverted to a month to month tenancy after April 30, 2016. Monthly rent of \$1,400.00 was due on the first day of each month. The tenants paid a security deposit of \$700.00 at the start of the tenancy which the landlord continues to hold according to the tenants.

The tenants testified that they served their written forwarding address on the landlord by registered mail on August 17, 2017 and that the landlord failed to pick up the registered mail which resulted in their package eventually being returned as unclaimed. The tenants provided two registered mail tracking numbers. The first registered mail tracking number was from Ireland postal services as the tenant now reside in Ireland. The second registered mail tracking number was assigned by Canada Post once the package from Ireland entered Canada. Both tracking numbers have been included on the cover page of this decision for ease of reference and are marked as 2 and 3 respectively.

The tenants stated that the landlord failed to complete an incoming and outgoing condition inspection report and had no permission to keep any amount of their \$700.00 security deposit.

For ease of reference, the tenants' written forwarding address has also been included on the cover page of this decision.

The tenants stated that they are not waiving their right to double the return of their security deposit if they are so entitled. The tenants stated that the landlord has failed to return their security deposit since the tenancy ended on August 1, 2017 and since the tenants mailed their written forwarding address to the landlord by registered mail.

### Analysis

Based on the above, the undisputed testimony and documentary evidence from the tenants, and on a balance of probabilities, I find as follows.

Section 38 of the *Act* applies and states:

#### **Return of security deposit and pet damage deposit**

**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.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[My emphasis added]

Based on the undisputed evidence before me, I find that the landlord has breached section 38 of the *Act*. I find the landlord was deemed served with the tenants' written forwarding address in accordance with section 90 of the *Act* on August 22, 2017, which is 5 days after the August 17, 2017, registered mail package was mailed to the landlord. The landlord is not entitled to refuse service under the *Act* and the deemed service provisions of section 90 of the *Act* apply.

I also accept that the tenants did not provide their written consent for the landlord to retain any portion of the tenants' \$700.00 security deposit. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of August 22, 2017.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlords must pay the tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Therefore, I find the tenants are entitled to **\$1,400.00** which is double the original \$700.00 security deposit.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Given the above, I find the tenants have established a total monetary claim in the amount of \$1,500.00. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$1,500.00** owing by the landlord to the tenants.

**I caution** the landlord to comply with section 38 of the *Act* in the future.

### Conclusion

The tenants' application is fully successful.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$1,500.00 owing by the landlord to the tenants. This order must be

served on the landlord by the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned to comply with section 38 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 18, 2018

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Residential Tenancy Branch