



# 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 tenant's 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 landlords 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 tenant attended the hearing and was given a full opportunity to be heard, to present their sworn testimony and to make submissions.

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 gave undisputed affirmed testimony that the Application for Dispute Resolution (the Application) and an evidentiary package were personally served to each landlord on August 28, 2018. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords are duly served with the Application and an evidentiary package on August 28, 2018.

The tenant gave undisputed affirmed testimony that they personally handed their forwarding address to Landlord S.K. on August 21, 2018. The tenant submitted that they had the landlord sign the written forwarding address at the time of service. In

accordance with section 88 I find that the landlords are duly served with tenant's forwarding address on August 21, 2018.

### Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The tenant testified that this tenancy began on May 01, 2018, with a monthly rent in the amount of \$1,250.00, due on the first day of each month. The tenant gave undisputed affirmed testimony that they paid a combined security and pet deposit in the amount of \$1,250.00.

The tenant provided in evidence:

- A copy of a text message exchange between Landlord S.K. and the tenant in which the landlord acknowledges the security and pet deposit being paid in the amount of \$1,250.00;
- A copy of a letter dated August 21, 2018, signed by landlord S.K., which contains the tenant's forwarding address; and
- A copy of a Monetary Order Worksheet with the tenant's monetary claim of \$1,250.00.

The tenant gave undisputed affirmed testimony that they moved out of the rental unit and then provide their forwarding address to the landlords in writing on August 21, 2018.

The tenant stated that the landlords did not return their security deposit and that they are seeking double the return of their security and pet deposit.

### Analysis

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that 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 to retain a portion of the security deposit, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date that 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 duly served with the tenant's forwarding address on August 21, 2018, I find that the landlord was obligated to obtain the tenant's written consent to keep the security deposit or to file an Application on or before September 05, 2018, 15 days after receiving the tenant's forwarding address.

I find that there is no evidence provided to show that the landlord had the tenant's agreement in writing to keep the security deposit or that the landlord applied for dispute resolution within 15 days of receiving the tenant's 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 tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award of \$2,500.00, which is comprised of double the security and pet deposit (\$1,250.00 X 2) plus applicable interest. There is no interest payable over this period.

As the tenant has been successful in their application, I allow the tenant's 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

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$2,600.00 for double the security deposit and to recover the \$100.00 filing fee from the landlord.

The tenant is 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: December 24, 2018

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Residential Tenancy Branch