



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 27, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on January 11, 2019 as a teleconference hearing. M.T. appeared on behalf of the Tenants and provided affirmed testimony. No one appeared for the Landlords. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that M.T. and I were the only persons who had called into this teleconference.

M.T. testified the Application and documentary evidence package was served on the Landlords by registered mail. Copies of the Canada Post registered mail receipts were submitted confirming the mailings took place on July 30, 2018. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the Application and documentary evidence on August 4, 2018, the fifth day after their registered mailings. The Landlords did not submit documentary evidence in response to the Application.

M.T. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the 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

1. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

M.T. testified that the tenancy began on August 1, 2016, and ended on July 31, 2018. During the tenancy, rent was due in the amount of \$1,600.00 per month. M.T. testified that they paid a security deposit of \$800.00 to the Landlords. The Tenants submitted a copy of the tenancy agreement in support of this testimony.

M.T. testified that she sent the Landlords an email on August 11, 2017 and again on August 15, 2017, containing the Tenants forwarding address. In the email, the Tenants asked the Landlords if the email was sufficient to consider the forwarding address received, or else they requested a fax number to send the forwarding address to the Landlords in writing. On August 16, 2017, the Landlords confirmed receipt and indicated that the email was sufficient for the purpose of providing the forwarding address. A copy of the email, including the response from the Landlords was included with the Tenants documentary evidence.

M.T. testified that the tenancy ended on July 31, 2017. M.T. stated there was no move out condition inspection completed at the end of their tenancy. M.T. stated that they were not provided with any opportunities to complete an inspection, nor did she agree to any deductions from the security deposit. M.T. testified that she is not aware of any Application made by the Landlords seeking to retain their security deposit.

M.T. stated that she received a cheque dated August 31, 2017 in the amount of \$20.57 from the Landlords around mid-September 2017. M.T. provided a copy of the cheque in her documentary evidence. M.T. testified that the remaining balance of the security

deposit was applied to damage the Landlords claimed occurred during the tenancy. M.T stated that these deductions were not unauthorized by the Tenants.

M.T. is seeking double the security deposit, less the \$20.57 already received. No one on behalf of the Landlords attended the hearing to provide any evidence or testimony for my consideration. You totally don't have to say this but I always write in that neither of the Landlords nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

### Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants vacated the rental unit on July 31, 2017 and provided the Landlords with their forwarding address by email on August 11 and 15, 2017 and also verified if they preferred receiving the forwarding address via fax as well. The Landlords responded by email on August 16, 2017 confirming that service of the Tenants forwarding address via email was sufficient.

I find that the Landlords confirmed receipt of the Tenants forwarding address on August 16, 2017. As there is no evidence before me that that the Landlords were entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until August 31, 2017, to repay the deposit or make an application for dispute resolution. The Landlords did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlords, less any amounts already received.

M.T. testified that the Landlords returned \$20.57 of the Tenants security deposit which was received mid-September 2017.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit ( $\$800.00 \times 2 = \$1,600.00$ ), then deduct the amount already returned to the Tenants ( $\$1,600.00 - \$20.57 = \$1579.43$ ), to determine the amount of the monetary order.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,679.43.

### Conclusion

The Tenants are granted a monetary order in the amount of \$1,679.43. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: January 21, 2019

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Residential Tenancy Branch