



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- authorization to obtain a return of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72

JE, JP, and KN attended the hearing for the tenant. CG appeared on behalf of the landlord. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was served the notice of dispute resolution package by registered mail on November 28, 2018 and they provided a copy of the Canada Post registered mail tracking number. The tenants testified that they sent their evidence package to the landlord by registered mail on January 9, 2019. The landlord acknowledged receipt of the notice of dispute resolution package and the evidence package. I find that the landlord was served with the notice of dispute resolution package pursuant to section 89 of the *Act*.

### *Preliminary Matter: Adjournment of the hearing*

The hearing was adjourned approximately 25 minutes into the hearing because an emergency alarm was activated at the Residential Tenancy Branch (RTB). I notified all parties that I was adjourning the hearing and I disconnected the conference call. After a brief adjournment of approximately 15 minutes, the parties were contacted by the RTB and the hearing was reconvened at approximately 2:20 pm on the same day. JE, JP,

and KN attended the reconvened hearing for the tenants. CG appeared on behalf of the landlord at the reconvened hearing.

Issue(s) to be Decided

Are the tenants entitled to an order for return of their security deposit pursuant to section 38?

If so, are the tenants entitled to an amount equal to double the security deposit pursuant to section 38?

Are the tenants entitled to recover their filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy commenced on August 28, 2016. The rent at the end of the tenancy was \$1,855.00 payable on the first day of each month. The tenants paid the landlord a security deposit of \$875.00 and no pet damage deposit. The parties conducted a walkthrough inspection with the landlord before they moved in. However, the parties did not complete a condition inspection report.

The parties also agreed that the tenancy ended on September 30, 2018. At the end of the tenancy, the parties held a meeting at the property and a walkthrough was performed. The landlord noted that the rental unit was dirty and there was some damage including a hole in an interior wall. The landlord advised the tenants that she could only give them a partial refund of the security deposit because she needed to make a deduction for repairs and cleaning costs. One of the tenants verbally agreed to this but the other two tenants did not agree to any deductions from the security deposit. The parties did not complete a condition inspection report at the end of the tenancy.

The tenants testified that they gave the landlord written notice of their forwarding address by delivering a letter to the landlord's mailbox on October 13, 2018. The landlord denied receiving the notice. The landlord testified that the mailbox at the front of the building on the property at which she resides is not her mailbox. The landlord testified that she occupies a suite on the side of the building. The tenants submitted a video showing the delivery of the notice to the mailbox on the front of the building at the landlord's address.

The tenants testified that they also delivered their forwarding address by email on October 11, 2018. The tenants testified that the email also included instructions for an electronic transfer of the deposit if the landlord wanted to deliver the refund electronically. The tenants testified that the landlord sent a reply email later the same day.

The landlord testified that she attempted to electronically deliver a partial refund of \$404.75 to the tenants multiple times. However, the landlord stated that the electronic transfer was not accepted by the tenants. The electronic transfer eventually expired and the funds are still in the landlord's bank account. The tenants testified that they did not accept the e-transfer because the payment was less than the complete deposit.

The landlord testified that the tenants left the property in a dirty condition and the walls needed repair. The landlord submitted multiple photographs showing the condition of the property.

The landlord submitted a letter from a former tenant which stated that the property was in good condition when the tenants moved in.

The landlord also submitted a letter from her maintenance employee who claimed to have witnessed the move out walkthrough. The letter stated that the property was left in a dirty and damaged condition and that the tenants agreed to deduct the repair costs from the security deposit.

The landlord submitted an invoice for \$299.25 for repairs dated October 16, 2018. The landlord also submitted an invoice of \$168.00 for carpet cleaning.

### Analysis

Section 24(b) of the *Act* states that, "The right of a landlord to claim against a security deposit ... for damage to residential property is extinguished if the landlord does not complete the condition inspection report..." Based on the agreed testimony of both parties, I find that the landlord did not complete a condition inspection report on either the move in or move out of the tenants. Accordingly, the landlord's right to claim against the security deposit for damage to the rental unit has been extinguished pursuant to section 24(2) of the *Act*.

Furthermore, section 38 of the *Act* states that:

- 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.

Based on the agreed testimony of both parties, I find that the tenancy ended on September 30, 2018.

On the basis of the undisputed testimony of the tenants, I find that the tenants provided the landlord with their forwarding address by email on October 11, 2018. As the landlord sent an e-transfer of a partial refund of the deposit according to the instructions in the tenant's email, I find that the landlord had received this email and that she had received the tenants' forwarding address, in writing.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by email is not one of the methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the landlord received the email message in which the tenants provided their forwarding address, I find that the landlord has been sufficiently served with the tenants' forwarding address.

The tenants also testified that they delivered their forwarding address in writing by placing a correspondence in the landlord's mail box on October 13, 2018. The landlord denied receiving this correspondence. However, since I have already determined that the landlord received the tenants' forwarding address in writing on October 11, 2018 by email, the October 13, 2018 correspondence is moot and I will not analyze the delivery of this correspondence.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the forwarding address was provided on October 11, 2018, the landlord's to repay the deposit or file an application for dispute resolution was October 26, 2018.

I find that the landlord did not perform either of these requirements by the October 26, 2018 deadline. Although the landlord has claimed that the property was damaged by the tenants, this is not relevant to the tenants' claim herein for return of their deposit because the landlord did not file an application for dispute resolution regarding this claim for damage before the deadline October 26, 2018. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*. However, the landlord is still at liberty to file an application for dispute resolution regarding any claims for damages to the rental unit.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit.

In addition, since the tenants have been successful this matter, I award the tenants \$100.00 for recovery of the filing fee.

The total award to tenants is accordingly \$1,850.00 as set forth below:

Item	Amount
Recovery of double the security deposit (\$875.00 times 2)	\$1,750.00
Filing recovered by tenants	\$100.00
<b>Total award to tenants</b>	<b>\$1,850.00</b>

Accordingly, I order the landlord to pay the tenants the sum of \$1,850.00.

### Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenants reimbursement of the filing fee.

I grant the tenants a monetary order in the amount of **\$1,850.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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: February 1, 2019

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Residential Tenancy Branch