



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On October 23, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package and their evidence, to the Landlord’s address on the tenancy agreement, by registered mail on October 26, 2018 and he provided a receipt of this (the registered mail tracking number is on the first page of this decision). In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on December 1, 2017 and the tenancy ended on September 30, 2018 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,100.00 per month, due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the tenancy agreement was submitted into documentary evidence.

The Tenant advised that he mailed a letter to the Landlord on October 2, 2018 and provided their forwarding address in writing. He submitted documentary evidence of the letter indicating that he provided their forwarding address to the Landlord.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address in writing was provided in writing by the Tenants on October 2, 2018 by mail. According to Section 90 of the *Act*, this letter would be deemed received after five days. The evidence before me is that the Landlord did not return the security deposit or make an Application to keep the deposit within 15 days of October 7, 2018. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without authority under the *Act* or having the Tenants' written consent.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of October 7, 2018, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenants have established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a Monetary Order in the amount of **\$1,100.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenants**

Item	Amount
Double the security deposit	\$1,100.00
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$1,200.00</b>

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,200.00** 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 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 19, 2019

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Residential Tenancy Branch