



# 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 tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 31 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence package.

Neither party had any objections to the other party's late evidence. Both parties agreed to proceed with the hearing and for me to consider both parties' evidence at the hearing and in my decision.

### Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee paid for this application?

## Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2015 and ended on May 30, 2018. Monthly rent in the amount of \$1,770.00 was payable on the first day of each month. A security deposit of \$885.00 was paid by the tenants. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy.

Both parties agreed that they attended a previous Residential Tenancy Branch ("RTB") hearing for this tenancy on September 24, 2018, after which a decision, dated September 26, 2018, was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. As noted in the previous decision, both parties agreed that the tenants provided their forwarding address to the landlord at that previous hearing and that the landlord had 15 days to either return the full deposit or make an application to claim against it. That Arbitrator dismissed the tenants' application with leave to reapply because it was a premature application. The tenants have now made this current application to claim for double their security deposit.

The landlord testified that he attempted to return the tenants' security deposit of \$885.00 on October 5, 2018, to the female tenant's email address, by way of e-transfer. He said that the tenants did not accept it and it expired on November 5, 2018. He stated that he again tried to return it by e-transfer to the female tenant's email on November 9, 2018 but the tenants again did not accept it so it expired on December 9, 2018. He claimed that he again attempted to send it on December 20, 2018 and the tenants accepted it because it was sent to the female tenant's email with a reminder to her by text message. He maintained that the tenants intentionally did not accept the e-transfers because they wanted to wait more than 15 days in order to claim for double their deposit. The landlord provided an e-transfer screenshot showing "December 2018" of the above e-transfers indicating that the transfers were sent, expired and received. He said that the screen still showed October and November 2018 transactions despite December 2018 being selected in the screenshot. He said that he did not get any transaction numbers for the e-transfers but he had email and bank records showing each time the money left his account and returned to his account on the above dates but he did not submit it because he did not think it was necessary.

The tenants claim that they did not receive the e-transfers on October 5 or November 9 and they believe the landlord did not send them. They said that they only received the December 20, 2018 e-transfer and they accepted it. They testified that they called the interac e-transfer company and were told that e-transfers expire 30 days after they are sent. They claim they were told they could not get a written record of the conversation because the agent could not verify their identity over the phone. The tenants provided a printout of the interac rules and submitted it for this hearing, indicating that e-transfers expire 30 days after they are sent. The tenants stated that the landlord's e-transfer from October 5 to November 5 was 32 days and from November 9 to December 9 was 31 days, so the landlord fabricated the screenshot of the above e-transfers and never sent them to the tenants. The tenants also claimed that the landlord's transactions for October and November should not show up when only December 2018 is selected as indicated on the screenshot. They maintained that the landlord should have transaction numbers for each transaction and bank and email records indicating when the money left his account and when it returned, to confirm his e-transfer dates and he did not provide them.

The tenants seek a return of double the amount of the security deposit of \$885.00, totalling \$1,770.00, minus the portion of \$885.00 already returned to them. The tenants also seek to recover the \$100.00 filing fee paid for this application.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities based on the testimony and written evidence. The tenancy ended on May 30, 2018. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not make an application for dispute resolution to claim against the deposit.

As noted by the previous Arbitrator, the tenants provided their written forwarding address to the landlord on September 24, 2018 at the previous RTB hearing. The landlord had 15 days to return the tenants' deposit or file an application to claim against it. I find that the landlord failed to return the deposit within 15 days of September 24, 2018, as it was returned on December 20, 2018. I find that the landlord did not make any attempts prior to this date to return the tenants' security deposit. I do not accept the landlord's evidence that he attempted to return the deposit on October 5, 2018, which is the only date that is within the 15 day period of September 24, 2018. The second date provided by the landlord of November 9, 2018, is outside the 15 day period.

I find that the landlord failed to show that the money left his account on October 5, 2018, or was returned to his account on November 5, 2018 when he says the e-transfer expired. The landlord failed to provide documentary proof through email and bank records even though he said he had them. The tenants provided a copy of their original e-transfer email showing they sent a security deposit of \$885.00 which was accepted by the landlord on September 3, 2015. I also question the landlord's e-transfer screenshot which apparently shows October and November 2018 transactions when only December 2018 is selected as a filter. The tenants also provided a copy of the relevant bank online filters showing that when a specific month is selected, only that month can be viewed, not any other months. I find that a screenshot from the landlord, rather than an official bank statement, is also questionable because these screenshots can be modified or altered.

The tenants provided proof from the interac company policies and the relevant bank e-transfer policy that e-transfers expire 30 days after they are sent, questioning the time period between when the landlord says he sent the first e-transfer on October 5, 2018 and November 5, 2018 when he said it expired, which is in excess of 30 days. The tenants stated that interac refused to provide them with a written record of their telephone conversation with the tenants because they could not verify the tenants' identity over the phone. I find that the tenants provided sufficient proof to question the landlord's documents and the landlord could not successfully refute their position. The tenants further provided the email alerting them of the e-transfer on December 20, 2018, which indicated it would expire on January 18, 2019, which was 30 days later. I find that the tenants cannot show the absence of the security deposit being deposited into their account but the landlord could have easily shown the transaction sent on October 5, 2018 and expired on November 5, 2018, but he failed to do so. The landlord event provided a copy of the interac email showing that the \$885.00 was accepted by

the tenants on December 20, 2018, so he could have easily provided the other e-transfer attempts in October and November 2018.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$885.00, totalling \$1,770.00, minus the portion already returned to them of \$885.00, leaving a balance of \$885.00.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$985.00 against the landlord. 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: March 08, 2019

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Residential Tenancy Branch