



# 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 tenants' application under the *Residential Tenancy Act* (the "Act"):

- for an authorization to obtain a return of their security deposit pursuant to section 38; and
- reimbursement of the filing fee pursuant to section 72.

Tenant, KM and the landlord attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### 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 started January 1, 2017 with a monthly rent of \$2,500.00. The tenancy agreement stated a security deposit of \$1,250.00 and a pet damage deposit of \$1,000.00. However, the tenants provided a money transfer receipt showing that they transferred \$2,275.00 to landlord on December 13, 2016. Neither party knew why the tenants paid a higher deposit than the amount stated in the tenancy agreement.

The parties agreed that the tenants moved out of the property at the end of August 2018. The tenants testified that they provided their forwarding address to the landlord by email on September 14, 2018.

The tenant testified that the parties did not complete a condition inspection report on move-in or on move-out.

The landlord admitted that he has not returned any portion of the security deposit or pet damage deposit and that he has not filed an application to claim on the deposits.

The landlord testified that he has not returned the deposit because the tenants have extensively damaged the property. The landlord testified that the tenants severely damaged the backyard, they broke a countertop and they broke a cabinet. The landlord provided photographs of the damage and he provided repair receipts. The landlord asserted that the tenants were not entitled to any refund of the deposits because the repair costs exceed \$5,000.00 which is well in exceeds the deposits.

The tenant argued that the yard was in poor condition when they moved in and they were not responsible for any yard maintenance other than cutting the lawn.

### 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 undisputed testimony of the tenants, 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:

**Return of security deposit and pet damage deposit**

**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 August 31, 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 September 14, 2018. Section 38(1) of the Act requires that a forwarding address be provided in writing. I find that delivery of the tenants' forwarding address by email was sufficient service in writing of the tenants' forwarding address pursuant to section 71(2)(c) of the Act.

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 September 14, 2018, the landlord's deadline to repay the deposit or file an application for dispute resolution was September 29, 2018.

I find that the landlord did not perform either of these requirements by the September 29, 2018 deadline. Although the landlord has claimed that the rental unit was damaged by the tenants, this is not relevant to the tenants' claim herein for return of their security deposit and pet damage deposit because the landlord did not file an application for dispute resolution regarding this claim for damage before the September 29, 2018 deadline. 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 and

pet damage 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 and pet damage deposit.

I find that the total security deposit and pet damage deposit held by the landlord to be \$2,275.00. Although the tenancy agreement states deposits totaling \$2,500.00, the definitions for “security deposit” and “pet damage deposit” in the *Act* state that the deposits are the amount of money that is paid to the landlord, not what is agreed to be paid. Although the parties agreed to a total deposit of \$2,500.00, the electronic transfer receipt shows that the tenants actually paid the amount of \$2,275.00 for deposits. Accordingly, I find that the tenants are entitled to an award of double the amount of \$2,275.00 pursuant to section 38(6) of the *Act*.

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 \$4,650.00 as set forth below:

<u>Item</u>	<u>Amount</u>
Recovery of double the deposits (\$2,275.00.00 times 2)	\$4,550.00
Filing fee recovered by tenants	\$100.00
Total award to tenants	<b>\$4,650.00</b>

### Conclusion

I grant the tenants a monetary order in the amount of **\$4,650.00**. 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: March 20, 2019

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Residential Tenancy Branch