



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On December 5, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage 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 Tenants attended the hearing. The Landlord attended the hearing as well, with K.G. attending as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package to the Landlord by registered mail on December 8, 2018 and K.G. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenants advised that they did not provide any evidence for consideration on this file.

K.G. advised that the Landlord’s evidence was served to the Tenants by registered mail on February 20, 2019 and the Tenants confirmed receipt of this. As this complies with the time frame requirements for service under Rule 3.15 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

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

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants 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.

All parties agreed that the tenancy started on July 29, 2017 and the tenancy ended on July 24, 2018 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,950.00 per month, due on the first day of each month. A security deposit of \$975.00 and a pet damage deposit of \$500.00 were also paid.

Both parties agreed that the Tenants provided the Landlord with their forwarding address a week after the tenancy ended, via an email. The Landlord made an Application to keep the deposits on August 1, 2018 (the relevant file number is listed on the first page of this decision). However, neither the Landlord or a representative of the Landlord attended this hearing. As such, it was determined in this decision that the Landlord's Application to claim against the deposits was dismissed without leave to reapply. During this hearing, K.G. provided a reason for not attending the previous hearing; however, he confirmed that he did not apply for Review Consideration on that prior hearing.

As per the decision on this relevant file number, the Tenants are now seeking compensation in the amount of double the security deposit in the amount of **\$1,950.00** and double the pet damage deposit in the amount of **\$1,000.00**, as the Landlord did not comply with Section 38 of the *Act*.

### 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, a forwarding address was provided by the Tenants by email and the Landlord clearly received this, as an Application was made to keep the deposits within 15 days of receiving the forwarding address on August 1, 2018. However, as the Landlord's Application was dismissed without leave to reapply and as the Landlord is outside of the timeframe to deal with the deposits pursuant to Section 38 of the *Act*, the Landlord in essence illegally withheld the deposits 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 and pet damage deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of **\$2,950.00**.

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	\$1,950.00
Double the pet damage deposit	\$1,000.00
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$3,050.00</b>

#### Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$3,050.00** 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: March 29, 2019

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**Residential Tenancy Branch**