



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANADIAN APARTMENT PROPERTIES REAL ESTATE  
INVESTMENT TRUST  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenants applied for the return of their security deposit, and to recover the filing fee. The matter was set for a conference call.

One of the Tenants (the "Tenant") and an Agent for the Landlord (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of her security deposit?
- Is the Tenant entitled to recover the filing fee for this application?

### Background and Evidence

Both parties agreed that the tenancy began on March 1, 2017, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. Rent in the amount of \$1,300.00 was to be paid by the first day of each month, and that the Tenants paid the Landlord a \$650.00 security deposit (the deposit). It was also agreed that the Tenants moved out of the rental unit on November 30, 2018, in accordance with the *Act*.

Both parties agreed that the Tenants provided the Landlord with their forwarding address, in writing, the same day they moved out of the rental unit, on November 30, 2018.

The Tenant testified they received their deposit back on February 10, 2019, 72 days after their tenancy had ended.

The Landlord testified that they had entered the Tenants' forwarding address wrong in their computer system and that the deposit had been returned to the Tenants but to the wrong address. The Landlord did not dispute the Tenants' claim that the deposit had been returned late.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

#### **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.

I accept the agreed upon testimony of these parties, and find that this tenancy ended on November 30, 2018, the date the Tenants moved out of the rental unit and provided their forward address to the Landlord. Accordingly, the Landlord had until December 15, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits.

I also accept the agreed upon testimony that the Tenants deposit had not been returned to the Tenants within the legislated timeline. I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

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

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double their deposit. I grant the Tenants a monetary order in the amount of \$650.00, consisting of \$1,300.00 for the return of double the security deposit, less the \$650.00 that the Landlord has already returned to them.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$750.00**. The Tenants are provided with this Order 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: May 21, 2019

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Residential Tenancy Branch