



# 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* (the "**Act**") for:

- the return of double the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Issue(s) to be Decided**

Are the tenants entitled to:

- 1) the return of double their security deposit; and
- 2) recover their filing fee from the landlord?

### **Background and Evidence**

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

The parties entered into a written tenancy agreement starting February 27, 2017. Monthly rent started at \$2,800.00, but was increased to \$2,900.00 after one year. Monthly rent was payable on the first of each month. The tenants paid the landlord a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 (collectively, the "**Deposits**"). The landlord demanded, and the tenants paid, an additional \$100.00 of security deposit after one year elapsed. The landlord still retains the Deposits.

The tenants vacated the rental unit on September 30, 2018.

The parties agree that no move-in inspection report was completed. The landlord testified that she did not know that she had to make one. She testified that she took a number of photos of the condition of rental unit prior to the tenants moving in.

The parties agree that a move-out inspection was conducted by the parties on September 30, 2018. The tenants, however, refused to sign the inspection report on the basis that a move-in inspection had not been done.

The tenants testified that the landlord has not returned Deposit. They testified they provided their forwarding address to the landlord on three separate occasions:

- 1) On September 28, 2018, in person, on a sheet of paper;
- 2) On October 4, 2018, by text message; and
- 3) On October 13, 2018, by posting it on the landlord's front door.

The tenants did not submit into evidence a copy of the text message sent on October 4, 2018. The tenants did, however, submit into evidence copies of photographs wherein one of the tenants can be seen in front of the landlord's residence, and a "recipe card" containing the tenants' forwarding address can be seen on the landlord's front door.

The landlord denies ever receiving the tenants' forwarding address. She does not deny that it was posted on her door on October 13, 2018, but speculates that she did not receive it because she has two small children, one of whom may have taken it.

The landlord confirmed that she did not return the Deposits. She testified that the tenants did a significant amount of damage to rental unit during the course of their tenancy, including damage to:

- 1) walls;
- 2) flooring;
- 3) mirrors;
- 4) window screens;
- 5) garage door; and
- 6) shelving.

The landlord, in her written submissions, stated that the cost of repairing this damage is in excess of \$20,000.00. The bulk of these costs is related to the replacement of flooring (in excess of \$12,000.00). The landlord testified that the floor was damaged by the tenants' dogs.

The tenants deny that they caused any of the as alleged by the landlord.

### **Analysis**

Section 38(1) of the Act states:

#### **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.

Section 88 of the Act states:

#### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

Based on my review of the documentary evidence, and on the tenants' testimony, I find that the tenants posted their forwarding address on the landlord's front door on October 13, 2018. Per section 88(g) of the Act, I find that this is a permissible way to provide the landlord with their forwarding address.

As such, I find that the tenants provided their forwarding address to the landlord on October 13, 2018. I do not accept the landlord's argument (that her children may have removed the forwarding address from the door) to be sufficient reason not to make such a finding.

Based on the landlord's own testimony, I find that she has not returned the Deposits to the tenants. I also find that the landlord has not made an application for dispute resolution against the Deposits either within 15 days of receiving the forwarding address, or at all. It is not enough for the landlord to allege that the tenants caused damage to the rental unit. She must actually make an application to the Residential Tenancy Branch to recover her damages.

As such, I find that the landlord has failed to comply with section 38(1) of the Act.

Section 38(6) states:

(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.  
[emphasis added]

The Act requires that a landlord who breaches section 38(1) pay the tenants double the amount of the Deposits. During the hearing, the landlord stated that she did not understand the basis on which the tenants were requesting double the return of the Deposits. Section 38(6) is that basis. The fact that the landlord was unaware of such a provision does not shield her from its effects. A landlord is expected to know and follow the applicable laws governing the landlord/tenant relationship.

As such, I order that the landlord pay the tenants double the amount of the Deposits (\$5,800.00).

As I have already ordered that the landlord repay double the Deposits to the tenants, there is no need for me to examine the effect of the landlord's failure to conduct a move-in condition inspection report. I make no findings with regard to this issue.

As the tenants have been successful against the landlord, I ordered that the landlord repay the tenants their filing fee (\$100.00).

**Conclusion**

Pursuant to sections 38, 67, and 72, I order that the landlord pay the tenants \$5,900.00, representing an amount double the amount of the Deposits, and the tenants' filing fee.

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 14, 2019

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Residential Tenancy Branch