



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

On February 28, 2019, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss and for the Landlords to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlord and Tenant attended the conference call hearing. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence 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.

### Preliminary and Procedural Matters

On September 14, 2018, the Landlords applied for dispute resolution seeking compensation for damage and requesting to keep a pet damage deposit and security deposit.

The matter was set for hearing by telephone conference call on January 17, 2019 at 1:30 PM. The Tenant appeared at the hearing; however the Landlords did not.

The Arbitrator dismissed the Landlords application without leave to reapply and ordered the Landlords to pay the Tenants double the amount of the security deposit and pet

damage deposit. The Arbitrator issued a monetary order to the Tenants in the amount of \$2,800.00. The Arbitrator used the spelling of the Tenants names as provided in the Landlords application.

The Tenant submitted a request for correction to the Residential Tenancy Branch on February 20, 2019 to correct a typographical or obvious error. A response was provided on February 22, 2019 that a correction to the Landlords application is not warranted and the Tenant was invited to make her own application for dispute resolution.

### Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenants entitled other compensation?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on November 1, 2017 as a one year fixed term tenancy. Rent in the amount of \$1300.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit of \$650.00 and a pet damage deposit of \$650.00.

The Landlord testified that they made a claim for dispute resolution within the required time and submitted evidence to support their position. The Landlord submitted that they received the Tenant's forwarding address on September 5, 2018. The Landlord acknowledged that the Landlords failed to attend the hearing to present their evidence. The Landlord suggested that the rules indicate that if they do not attend the hearing the written submissions may or may not be considered.

The Tenants are seeking the return of double the security deposit and pet damage deposit in the amount of \$2,600.00. Despite being granted a monetary order on February 8, 2019, the Tenants needed to make their own application to correct an error in the Landlords application on the spelling of the Tenant's name.

The Tenant is also seeking an additional \$500.00 in compensation due to what was described as a stressful situation caused by the Landlord.

### Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a Landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

An Arbitrator is a neutral party who does not make the case for an applicant in an advocacy role. I find that the Landlords failed to attend the original hearing and their application was dismissed without leave to reapply in accordance with the rules of procedure.

I find that when the Landlords failed to appear at the hearing and their application to keep the security deposit and pet damage deposit was dismissed, it had the same effect as if the application was not made. Under section 38 of the Act, a Tenant has the right to the timely return of a security deposit and pet damage deposit. A Landlord does not get another opportunity to re-apply without the penalty provision of section 38(6) being applied.

I find that the Landlords failed to attend their hearing to pursue their claim to keep the security deposit and pet damage deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit.

I find that the monetary order in the amount of \$2,600.00 issued to the Tenants dated February 8, 2019 contains a spelling error and is not enforceable and is set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution. I find that the Tenant's had to

apply for dispute resolution to correct an error made by the Landlord in the Landlords' application.

I order the Landlords to pay the Tenants the amount of \$2,700.00. I grant the Tenants a monetary order in the amount of \$2,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

I dismiss the Tenants claim for additional compensation in the amount of \$500.00. The Tenant provided insufficient evidence that the Landlord has breached the Act, Regulation, or tenancy agreement and the Tenant has not established that she has suffered a loss.

### Conclusion

The Landlords failed to return the security deposit and pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$2,700.00.

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: June 18, 2019

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Residential Tenancy Branch