



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38.

The tenants applied to add the name of MP as a tenant which had been inadvertently overlooked. Accordingly, I amended the names of the tenants to include MP as one of the three tenants.

The tenants provided affirmed testimony that the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 2, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on April 7, 2019.

The tenants provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution on October 7, 2019.

Issue(s) to be Decided

- are the tenants entitled to a monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of Section 38 of the Act?

Background and Evidence

The tenants provided uncontradicted evidence as the landlord did not attend the hearing.

The parties entered into a tenancy agreement beginning October 5, 2017 and ending February 28, 2019. Rent was \$1,700.00 monthly payable on the the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$850.00 to the landlord which the landlord holds. The tenants did not provide authorization to the landlord to retain any of the security deposit.

The tenants submitted a copy of the tenancy agreement. The tenants testified that the tenants provided the landlord with a forwarding address for the return of the security deposit on March 5, 2019. The tenants submitted a copy of the hand-written document provided to the landlord on that day.

The tenants testified that the landlord has not filed an application to retain the security deposit.

The tenants requested return of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this

provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenants' evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenants' evidence that the tenants gave the landlord written notice of their forwarding address on March 5, 2019.

In addition, the tenants testified that no condition inspection report was prepared at the end of the tenancy as required under sections 23 and 35 of the *Act*. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

*24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*...*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the end of the tenancy.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a monetary order of **\$1,700.00**. The tenants did not claim reimbursement of the filing fee.

Security deposit	\$850.00
Doubling of security deposit under Section 38(6)	\$850.00
<b>Amount owing tenants by landlord</b>	<b>\$1,700.00</b>

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,700.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) 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: July 18, 2019

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Residential Tenancy Branch