



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE - PROPERTY MANAGEMENT  
DIVISIO and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      **FFT MNDCT MNSD**

### Introduction

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

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee.

RL attended the hearing on behalf of the landlord (“the landlord”). Both tenants attended. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Both parties raised issues of service of documentary and digital evidence; both parties agreed to proceed with the hearing despite each party claiming not to have received certain materials submitted by the other. I find the tenants served the landlord in accordance with section 89 of the *Act* except for the materials the landlord claimed not to have received or not to have been able to open. I further find the landlord failed to serve the tenants with the landlord’s materials at the updated address provided by the tenants to the landlord. The materials, receipt of which are not acknowledged by each party, shall not be considered by me in reaching my decision.

At the outset of the hearing, the tenants stated they withdrew all claims except for the return of the security deposit.

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

#### Issue(s) to be Decided

Are the tenants entitled to the following:

- 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 parties agreed the tenancy began on February 1, 2015. Rent was \$1,492.00 payable on the first of the month. At the beginning of the tenancy, the tenants paid \$725.00 for a security deposit and \$725.00 for a pet deposit (together \$1,450.00 and referred to as the "security deposit"). The parties disagreed on whether the tenancy ended on August 30, 2018 or a few days later.

The parties acknowledged the tenants provided their forwarding address in wiring to the landlord at the time of the condition inspection report prior to the end date of the tenancy. The parties further agreed the landlord returned the pet deposit of \$725.00 to the tenants by cheque dated October 18, 2018.

The parties agreed the tenants have not provided consent to the landlord to retain any portion of the security deposit.

The parties agreed the landlord has not filed an application for dispute resolution and the landlord retains \$725.00 of the security deposit for alleged damages and outstanding rent.

The tenants claim reimbursement of double the security deposit (\$1,450.00 x 2) as the landlord did not return the security deposit within 15 days of the later of the end of the

tenancy or the provision of the forwarding address in writing. The tenants claim is as follows:

ITEM	AMOUNT
Double the Security Deposit (\$1,450.00 x 2)	\$2,900.00
Reimbursement of the Filing Fee	\$100.00
(Less Security Deposit Returned)	(\$725.00)
<b>TOTAL CLAIM</b>	<b>\$2,275.00</b>

The landlord claimed the tenants were responsible for damages to the unit.

### Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

*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.*

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

- (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*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenants provided their forwarding address in writing pursuant to section 38(1)(b) at the end of the tenancy on August 31, 2018. I find the tenants did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit. Accordingly, I grant the tenant a monetary award in the amount of \$2,900.00 (2 x \$1,450.00). The amount returned by the landlord of \$725.00 is credited to the award.

As the tenants are successful in their application, I further grant the tenants reimbursement of the filing fee.

My award to the tenants is summarized as follows:

ITEM	AMOUNT
Double the Security Deposit (\$1,450.00 x 2)	\$2,900.00
Reimbursement of the Filing Fee	\$100.00

(Less Security Deposit Returned)	(\$725.00)
<b>TOTAL AWARD</b>	<b>\$2,275.00</b>

The landlord may still file an application for alleged damages and outstanding rent. However, the landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

*2.1 Starting an Application for Dispute Resolution*

*To make a claim, a person must complete and submit an Application for Dispute Resolution.*

Therefore, the landlord must file their own application to keep the deposit within the 15 days of certain events, as explained above.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of **\$2,275.00**.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: June 18, 2019

---

Residential Tenancy Branch