



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on August 12, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenants and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

### Background and Evidence

The parties confirmed that the Tenants paid a security deposit of \$905.00 and that the Landlord still holds this amount. The parties also confirmed that the Tenants left the rental unit on March 30, 2019, the same day the first move-out inspection was done with the Landlord's agent. The parties also agreed that the Landlord's agent decided after the first inspection, that the job was outside his scope, so he declined to fill out the condition inspection report. As such, the Landlord personally attended the rental unit for a second inspection with the Tenants on April 15, 2019. The Tenants signed the report and indicated they did not agree with the Landlord's report of damages. The Landlord did not sign the report.

The Tenants stated they gave their forwarding address via registered mail. The Landlord acknowledged receiving the Tenants' forwarding address in writing on March 28, 2019. The Landlord did not file an application against the Tenants' deposit, although he attempted to present reasons why he would like to keep it during the hearing, despite being told he would need to file his own application if he wants to claim against the deposit for damages.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on March 30, 2019, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenants' forwarding address in writing on March 28, 2019 (by registered mail). I find the Landlord is served with the Tenants' forwarding address in writing on this same day, March 28, 2019.

I note the Tenants did not authorize any deductions from the security deposit. I also note that, as per the documentary evidence, there was a move-in inspection, and both parties signed the condition inspection report. Further, although the parties disagreed at the move-out inspection, the evidence before me indicates that both parties participated

in these inspections. I find there is insufficient evidence to show that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord has 15 days from receipt of the forwarding address in writing, or the end of the tenancy (whichever is later) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. In this case, the latter of those dates is the date the Tenants moved out, on March 30, 2019. Despite being required to either return the deposit, or file an application against it, within 15 days, the Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$905.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,910.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

### Conclusion

I grant the Tenants a monetary order in the amount of **\$1,910.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and 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: August 12, 2019

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Residential Tenancy Branch