



# 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:

- authorization to obtain a return of all or a portion of their security 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 given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. At the commencement of the hearing, I confirmed the spelling of the landlord's name, which was amended to the spelling as noted above, with both parties' agreement.

As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package on June 8, 2019, which Tenant EV (the tenant) said they sent by registered mail on June 2, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord confirmed that they received copies of the tenants' written evidence, I find that the tenant's written evidence was served in accordance with section 88 of the *Act*. As the tenant said that they had not received any written evidence from the landlord, and the landlord confirmed that this evidence was not sent to the tenants, I have not considered the landlord's written evidence.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of

the Act? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on October 10, 2017. This tenancy was to cover the period from October 15, 2017 until October 31, 2018. When the Agreement expired, the tenancy continued as a month-to-month tenancy until the tenants vacated the rental unit on April 30, 2019. Monthly rent was set at \$1,825.00, payable on the first of each month. The tenants paid a \$912.50 security deposit when this tenancy began.

On April 29, 2019, the tenants and the landlord's property manager conducted a joint move-out condition inspection. A copy of the report of that inspection was entered into written evidence by the tenants. The tenants provided a forwarding address where their security deposit could be returned on the joint move-out condition inspection report provided to the landlord's property manager.

Although the tenants provided their forwarding address in writing to the landlord, the landlord attempted to return the tenants' security deposit to the tenants using an etransfer method that had been used during the tenancy. The email address the landlord used for their first attempt to return the security deposit was incorrect. When the tenants enquired as to the status of their security deposit, the landlord's subsequent efforts to return the security deposit by etransfer also proved unsuccessful. The tenant gave undisputed sworn testimony and written evidence that this was because the landlord's bank account was "blacklisted" due to some type of fraud prevention measures taken by the landlord's bank. Although the landlord was eventually able to clear up this problem with their bank, after the tenant's checked on why the security deposit was not being returned to the tenants promptly, the tenants did not receive this \$912.50 return of their security deposit until May 24, 2019.

When the tenants initially applied for dispute resolution on May 22, 2019, seeking a monetary award of \$912.00, they had not yet received a return of their security deposit. At the hearing, the tenant requested a monetary award in the amount of \$912.50 because the landlord had not returned their security deposit in full within 15 days of the end of their tenancy. The tenant said that they had neither given the landlord authorization to retain any portion of their security deposit, nor had they agreed to waive their right to receive a monetary award for the landlord's failure to comply with the

requirement to return their security deposit within 15 days of ending their tenancy. The tenants also applied for the recovery of their \$100.00 filing fee.

The landlord and their advocate said that the landlord had tried to return the security deposit to the tenants a number of times prior to May 15, 2019, but had been unable to complete their e-transfer of these funds to the tenants. The landlord's advocate said that they had not received the address provided by the tenants to the landlord's property manager, and, for that reason, chose to return the security deposit by e-transfer of these funds.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after April 30, 2019 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

In this case, the evidence is that the tenants did provide a forwarding address in writing to the landlord's representative who attended the joint move out condition inspection on the landlord's behalf. Whether or not the landlord received that forwarding address from their representative or whether or not the email address the landlord used to return the tenants' security deposit was accurate has little bearing on this matter. The landlord is still required to ensure that the tenants' security deposit is returned in full within 15 days of the latter of the end of the tenancy or the tenants' provision of their forwarding address in writing.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Although the landlord did complete the return of the security deposit to the tenants by May 24, 2019, this was after the 15 day time period for returning that deposit had expired. Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor successfully returned the tenants' security deposit in full within the required 15 days. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of their security deposit with interest calculated on the original amount only. No interest is payable.

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which enables the tenants to obtain a monetary award of \$912.50 for the landlord's failure to abide by the provisions of section 38 of the *Act*, and to recover their filing fee from the landlord:

<b>Item</b>	<b>Amount</b>
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$912.50
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,012.50</b>

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 03, 2019

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Residential Tenancy Branch