



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double 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. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package and some written evidence by registered mail on June 7, 2019, I find that the landlord was duly served with this material. The landlord maintained that they did not receive full details from the tenants as to what was entailed in their application. However, as I am satisfied that the landlord had sufficient knowledge of the tenants' application for a monetary award equivalent to double the value of their security deposit and how to submit written evidence to dispute the tenants' application and pursuant to paragraph 71(2)(b) of the *Act*, I consider the landlord sufficiently served with the tenants' hearing package for the purposes of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value 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

On March 3, 2018, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) that was to cover the rental period from March 15, 2018 until June 15, 2018. When this Agreement expired the tenancy continued on a month-to-month basis. Monthly rent was set at \$1,850.00, payable initially on the 15th of each month. This was subsequently revised with the agreement of the parties to the 1st of each month. The landlord continues to hold the tenants' \$925.00 security deposit.

Tenant EC (the tenant) gave sworn testimony supported by written evidence that they called the landlord prior to March 1, 2019 to advise the landlord of the tenants' intention to vacate the rental unit by March 31, 2019. The tenant entered into written evidence a copy of a March 1, 2019 email they sent to the landlord advising them of their intention to vacate the premises by March 31, 2019. The parties agreed that the tenants vacated the rental suite by March 31, 2019.

The landlord confirmed receipt of the tenants' notice of their forwarding address sent by the tenants on April 24, 2019. The landlord confirmed the tenants' assertion that they did not return the security deposit to the tenants, did not apply for dispute resolution to retain any portion of that deposit, and do not have the tenants' written authorization to retain any portion of the deposit.

In the landlord's written evidence and in sworn testimony at the hearing, the landlord maintained that the tenants did not provide the landlord with the required written notice to end their tenancy, and that the rental unit had been damaged and needed cleaning at the end of this tenancy. The landlord confirmed that they had not filed any application to the Residential Tenancy Branch (the RTB) for a monetary award stemming from the ending of this tenancy.

### 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 29, 2019, the fifth day after the registered mailing of April 24, 2019 was sent to the landlord, 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 tenants' security deposit.

The following provisions of Policy Guideline 17 of the RTB'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.*

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants gave written evidence 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 from the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allow the tenants to obtain a monetary award equivalent to double the value of their security deposit and to recover their filing fee from the landlord.

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$925.00 x 2 = \$1,850.00)	\$1,850.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,950.00</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 12, 2019

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Residential Tenancy Branch