



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of double the return of the \$700.00 security deposit, and to recover the cost of their \$100.00 filing fee.

The Tenants, I.S. and D.S., appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Landlord. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only people to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only people on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both of them and mailed to the Landlord, and that any orders will be sent to the appropriate Party.

The Tenants said they served their Application and Notice of Hearing on the Landlord via registered mail on June 24, 2019, and they provided a Canada Post tracking number for this package. The Tenants said they served the Landlord with their documentary evidence through the Landlord's mail slot in his door a couple days prior to their

statutory deadline. Pursuant to section 90 of the Act, I find that the registered mail package was deemed served on the Landlord on June 29, 2019, and I find that the documentary evidence was deemed served on the Landlord on September 9, 2019.

#### Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Tenants said that the periodic tenancy began on December 1, 2018, with a monthly rent of \$1,070.00, due on the first day of each month. The Tenants said that they paid the Landlord a security deposit of \$700.00, and no pet damage deposit. This is consistent with the details in the tenancy agreement. The Tenants said that the rental unit is a house with an upstairs suite that they rented, and that the Landlord lives in the downstairs suite.

The Tenants said that the tenancy ended when the Landlord entered the rental unit and assaulted the Tenant, D.S. They said the police advised them to leave immediately. The Tenants said that the Landlord was yelling at them to leave for the majority of the month they were there and that they vacated the rental unit on January 2, 2019.

The Tenants said they mailed a request for their security deposit with their forwarding address to the Landlord on February 13, 2019. According to section 90 of the Act, this notice was deemed served on the Landlord on February 19, 2019.

The Tenants submitted two witness letters that described the Landlord's behaviour in much the same way the Tenants did. One letter from a neighbour noted that the neighbour has observed this pattern of behaviour on the Landlord's part: he has people rent the upstairs suite, then he yells and swears at them and threatens them until they leave without the security deposit being repaid.

#### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I note that the Landlord did not sign the tenancy agreement; however, given on all the evidence before me, I find that the Parties had a tenancy, which was based on the standard terms set out in the legislation, including “whether or not the tenancy agreement is in writing,” as set out in section 12 of the Act.

In terms of the security deposit, I find that the Tenants provided their forwarding address to the Landlord on February 19, 2019, and that the tenancy ended on January 2, 2019. Section 38(1) of the Act states the following about the connection of these dates to a landlord’s requirement to return the security deposit:

**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.

The Landlord was required to return the \$700.00 security deposit within fifteen days of February 19, 2019, namely by March 6, 2019, or apply for dispute resolution to claim against the security deposit, pursuant to Section 38(1). There is no evidence before me that the Landlord returned any of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find that the Landlord failed to comply with his obligations under Section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenants \$1,400.00 from the Landlord in recovery of double the security deposit, pursuant to section 38(6) of the Act. Given that the Tenants were successful in their Application, I also award them recovery of the \$100.00 Application

filing fee for a total award of **\$1,500.00**.

### Conclusion

The Tenants' claim against the Landlord for the return of double the security deposit is successful in the amount of \$1,400.00. The Landlord did not return the Tenants' security deposit nor apply for dispute resolution. He was required to do one of these within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenants' forwarding address, pursuant to section 38 of the Act. As a result, and pursuant to section 38(6) of the Act, I award the Tenants with double their \$700.00 security deposit, plus recovery of the \$100.00 Application filing fee.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of **\$1,500.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 30, 2019

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Residential Tenancy Branch