



# 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, made on July 12, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlords by registered mail on July 15, 2019. The Landlords confirmed receipt. The Landlords testified that they served the Tenants with their documentary evidence by registered mail on September 21, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2018 and ended on May 27, 2019. During the tenancy, the Tenants paid rent in the amount of \$2,000.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00.

The Tenant stated that the parties came together and completed a move out inspection of the rental unit on May 28, 2019. The Tenant stated that on this date the Landlords provided the Tenants with a cheque in the amount of \$450.00. The Tenant stated that she was expecting the full return of the security deposit and did not consent to the Landlords deducting any amount from their deposit.

The Tenant stated that she provided the Landlords with her forwarding address via email on June 10, 2019. The Tenant stated that aside from the \$450.00 cheque, the Tenants have not received the remaining balance from their security deposit from the Landlords. The Tenants are seeking the full return of their deposit as well as the return of the filing fee.

In response, the Landlords stated that the male Tenant had accepted the return of the \$450.00 security deposit. The Landlords stated that they felt entitled to retain the remaining balance of the security deposit as the Tenants had broken a tenancy agreement that they had renewed prior to the end of the tenancy. As such, the Landlords have not returned the remaining balance of the Tenants' security deposit. The Landlords confirmed that they received the Tenants' forwarding address via email on June 10, 2019.

### Analysis

Based on the documentary evidence before me for consideration 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 deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the Tenants vacated the rental unit on May 27, 2019 and provided the Landlords with their forwarding address by email on June 10, 2019. The Landlords confirmed receipt of the Tenants' forwarding address on the same date. As there is no evidence before me that the Landlords were entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until June 25, 2019, to repay the deposit or make an application for dispute resolution. The Landlords did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlords, less any amounts already received.

The Tenant testified that the Landlords returned \$450.00 of the Tenants' security deposit which was received on May 28, 2019.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit ( $\$1,000.00 \times 2 = \$2,000.00$ ), then deduct the amount already returned to the Tenants ( $\$2,000.00 - \$450.00 = \$1,550.00$ ), to determine the amount of the monetary order.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,650.00.

### Conclusion

The Landlords breach Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$1,650.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: October 21, 2019

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Residential Tenancy Branch