



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The tenants apply to recover the remainder of a security deposit.

The respondent landlord did not attend the hearing within ten minutes after its scheduled start time at 1:30 p.m. on October 24, 2019. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the tenant Mr. K. and this arbitrator were the only ones who had called into this teleconference during that period.

Mr. K. showed that the landlord was served with the application and notice of this hearing by registered mail (tracking number shown on cover page of this decision). Canada Post records confirm that the registered mail was delivered to the landlord on July 19, 2019. I find the landlord has been duly served.

### Issue(s) to be Decided

Are the tenants entitled to recover any deposit money? Are they entitled to the doubling penalty imposed by s. 38 of the *Residential Tenancy Act* (the “Act”).

### Background and Evidence

On the undisputed evidence of the attending tenant, this tenancy ended on May 31, 2019. The landlord did not prepare a move-out condition report. The tenants provide the landlord with a forwarding address in writing on or about June 15. The landlord returned \$1100.00 of the \$1200.00 security deposit on or about June 25.

The tenants brought this application on July 11 seeking the remaining \$100.00 of the deposit money plus recovery of the \$100.00 filing fee. After service on the landlord the landlord sent the tenants another \$100.00 by e-transfer.

### Analysis

Section 38 of the *Act* provides that once a tenancy has ended and once a tenant has provided the landlord with a forwarding address in writing, the landlord then has a 15 day period in which she must either repay the deposit money to the tenant or make an application to keep all or a portion of the deposit money.

In this case the landlord failed to repay all of the deposit money or apply to keep any of it within that fifteen day period. A landlord is not entitled to unilaterally retain any part of deposit money. She must have either the tenant's written consent to retain it or an order from this office.

Section 38 states that if a landlord fails to comply she must pay the tenant double the amount of the deposit. I find that the doubling penalty is applicable to the facts in this case.

However, the tenants did not request a doubling in their application. Nevertheless, Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that an arbitrator is to apply the doubling penalty even when not requested unless the tenant specifically refuses it. The question was put to Mr. K. and he requested the doubling penalty.

As a result, the tenants are entitled to double the security deposit remaining at the end of the tenancy: \$2400.00, less the \$1100.00 paid in June 2019, less the \$100.00 paid in July 2019, leaving a balance of \$1200.00. I award the tenants recovery of the \$100.00 filing fee for this application.

Conclusion

The tenants will have a monetary order against the landlord in the amount of \$1300.00.

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 24, 2019

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Residential Tenancy Branch