



# 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 landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the tenants' application for dispute resolution ('application') and evidence package, which was served to them by way of registered mail. The landlords testified that outside of the package did not contain any information about the sender, and took issue with the service of the package. I find that the tenants had complied with sections 88 and 89 of the *Act*, and accordingly I find the landlords deemed served with the tenants' application and evidence package. The hearing proceeded. As the tenants confirmed receipt of the landlords' evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

### **Background and Evidence**

This month-to-month tenancy began on January 1, 2016, and ended on April 30, 2019. Monthly rent was set at \$800.00 plus \$150.00 for utilities, with a \$50.00 deduction applied for yard work. The tenants paid a security deposit in the amount of \$400.00, which the landlords still hold.

The tenants testified that they had provided the landlords with their forwarding address on July 15, 2019 by way of registered mail. The landlords dispute that they had ever received the tenants' forwarding address. The tenants provided proof of service in their evidentiary materials, including the tracking information for the package and address label.

The tenants testified that the landlords failed to return their security deposit as required by section 38 of the *Act*. The landlords confirmed that they had kept the security deposit in satisfaction of the losses they have suffered due to the tenants' failure to leave the home in reasonably clean and undamaged condition. The landlords submitted evidentiary materials, which included photos and descriptions to support the losses they had suffered due to the tenants' actions. The landlords confirmed that at the time of the hearing they had yet to file an application for dispute resolution, but felt that they had the right to retain the security deposit in satisfaction of the losses that they had suffered.

### **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 deposit 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 tenants 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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage 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."

In this case, I am satisfied that the tenants provided proof that they had provided the landlords with their forwarding address by way of registered mail on July 15, 2019. The

package is confirmed as delivered on July 18, 2019 according to the tracking information provided. I find that the landlords had not returned the tenants' security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit. I allow the tenants a monetary order in the amount of \$800.00.

As the tenants were successful with their application, I find that the tenants are entitled to recover the filing fee for this application.

### **Conclusion**

I issue a **\$900.00** Monetary Order in the tenants' favour which allows the tenants to recover the security deposit retained by the landlords, the filing fee for this application, plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: November 22, 2019

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Residential Tenancy Branch