



# 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 landlord pursuant to section 72.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on August 30, 2019 by way of registered mail. The tenants provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence for this hearing on September 4, 2019, 5 days after mailing.

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

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

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

### **Background and Evidence**

The tenants provided the following testimony and evidence. The tenants testified that this fixed-term tenancy began on January 6, 2019, and ended on June 29, 2019. The monthly rent was set at \$1,400.00, payable on the first of every month. The tenants paid a security and pet damage deposit in the amount of \$700.00 for each deposit, and the landlord only returned the pet damage deposit at the end of the tenancy.

The tenants provided a copy of a letter from the landlord dated August 1, 2019 confirming that the landlord had received the tenants' forwarding address on July 28, 2019, and that the landlord would be retaining the security reasons for the reasons listed in the letter.

The tenants testified that they had never given permission for the landlord to retain any portion of their deposit, nor has the landlord filed an application for dispute resolution.

### **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.

In this case, I find that the landlord has not returned the tenants' security deposit within 15 days of the provision of their forwarding address on April 6, 2017. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave undisputed sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any of the 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

As the tenants were successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlord.

### **Conclusion**

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security deposit, plus a monetary award equivalent to 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*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$700.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	700.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,500.00</b>

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: December 13, 2019

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Residential Tenancy Branch