



# 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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and tenant J.K. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2018 and ended on September 29, 2019. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$875.00 was paid by the tenant to the landlord. The landlord returned \$361.00 of the tenant's security deposit to the tenant on October 10<sup>th</sup> or 11<sup>th</sup>, 2019.

The tenant testified that she provided the landlord with her forwarding address on October 8, 2019 via registered mail. The landlord confirmed receipt of the tenant's forwarding address but could not recall on what date.

The landlord testified that he did not file an application with the Residential Tenancy Branch to retain any of the tenant's security deposit.

The landlord testified that he retained a portion of the tenant's security deposit because the tenants damaged the subject rental property. Receipts for repairs to the subject rental property were entered into evidence. The tenant testified that she believed the landlord was charging her for damage she did not do.

### Analysis

I find that the landlord received the tenant's forwarding address in writing on October 13, 2019, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

In this case, the landlord did not make an application to retain the tenant's security deposit and did not return all of the tenant's security deposit within 15 days of receiving

the tenants' forwarding address in writing. Therefore, the tenants are entitled to receive double their security deposit as per the below calculation:

$$\begin{aligned} &\$875.00 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \$1,750.00 - \$361.00 \\ &\text{(amount returned to tenant)} = \mathbf{\$1,389.00} \end{aligned}$$

I am not able, in this decision, to consider the landlord's claim for damages because the landlord did not file an application with the Residential Tenancy Branch for monetary damages arising out of this tenancy.

Since the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$1,489.00.

The tenants are provided with this Order in the above terms and the landlord must be served with 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 20, 2019

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Residential Tenancy Branch