



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought return of double their security deposit and recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for 1:30 p.m. on March 6, 2020. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:43 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant, S.M., testified that they served the Landlord with the Notice of Hearing and the Application on October 24, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

The Tenant testified that the information they received from Canada Post indicates the package was received by the Landlord on October 28, 2019. As such, I find the Landlord was duly served as of October 28, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenants' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenants and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenants confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit paid?
2. Should the Tenants recover the filing fee?

### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began January 1, 2019. Monthly rent was \$950.00, and the Tenants paid a \$475.00 security deposit.

The tenancy ended on August 29, 2019. By letter dated September 26, 2019, the Tenants provided their forward address to the Landlord. The Tenant confirmed that letter was also sent by registered mail. The tracking number for that letter is also included on the cover page of this my Decision. The Tenant confirmed that according to the information provided by Canada Post, the letter was received by the Landlord on September 27, 2019.

The Tenant stated that to her knowledge the Landlord did not make an application for dispute resolution within 15 days of receipt of the Tenants' forwarding address. The

Landlord also failed to return the deposit to the Tenants. The Tenants also did not authorize the Landlord to retain any of the deposit.

### Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the Tenants' undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they did not agree to the Landlord retaining any portion of their security deposit.

Based on the Tenant's testimony, and the registered mail tracking information provided by the Tenants, I find that the Landlord received the Tenants' forwarding address in writing on September 27, 2020. I further find that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. Based on the evidence before me, I find that the Landlord did not have any such authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$1,050.00**, comprised of double the security deposit (2 x \$475.00) and the \$100.00 fee for filing this Application.

### Conclusion

The Tenants' application for return of double their security deposit and recovery of the filing fee is granted. In furtherance of this the Tenants are given a formal Monetary

Order in the amount of **\$1,050.00**. The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: March 06, 2020

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Residential Tenancy Branch