



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### 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 her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant, J.S. did not attend and was not represented. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 18, 2020. The landlord did not submit any documentary evidence. Neither party raised any service issues.

I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to return of all or part of the security and pet damage deposits?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 15, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 29, 2018. The monthly rent was \$1,800.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$900.00 and a pet damage deposit of \$450.00 were paid on September 29, 2018.

During the hearing both parties clarified that the only outstanding amount was \$500.00 withheld by the landlord. Both parties confirmed the remaining amount was returned by the landlord to the tenant.

The tenants seek a clarified monetary claim of \$1,800.00 for return of double the \$900.00 security deposit.

Both parties confirmed that the tenancy ended on October 15, 2019 and that a \$900.00 security deposit and a \$450.00 pet damage deposit was paid at the start of the tenancy. Both parties confirmed that the tenant provided her forwarding address via text message instead of writing for return of the combined deposits.

Both parties confirmed that initially the landlord withheld return of the security and pet deposits and returned all but \$500.00. The landlord stated that she had initially been given permission to retain it, but that later tenants had disputed it.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that all but \$500.00 was returned by the landlord to the tenants. Both parties confirmed that the tenants did not provide their forwarding address in writing, but instead via text message. I note that the Act does not currently consider text/emails as "in writing". On this basis, I find that the tenants failed to comply with section 38 (1) of the Act. As such, the tenants are not entitled to compensation under section 38 (6) of the Act. However, both parties confirmed that the landlord still retains \$500.00 of the deposits for which the landlord has not applied for dispute to retain nor did she gain the permission of the tenants to retain it. I order the return of the outstanding \$500.00 to the tenants.

Conclusion

The tenants are granted a monetary order for \$500.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: March 24, 2020

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Residential Tenancy Branch