



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 1, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' documentary evidence, and application. The Landlord stated she did not serve her evidence to the Tenants. Given the Landlord failed to serve her evidence to the Tenants, I find it is not admissible, pursuant to Rule of Procedure 3.17.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Tenants stated that the tenancy ended on November 1, 2019, the day they moved out of the rental unit. Both parties agreed that the Tenants paid a security deposit and pet deposit, totalling \$2,400.00.

After moving out, the Tenants stated they sent their forwarding address in writing to the Landlord, by registered mail, on November 21, 2019. Proof of mailing was provided. The Landlord acknowledged receiving the Tenants' forwarding address in writing, and returned all of the deposits, except for \$220.00, which she kept to pay for carpet cleaning. The Tenants stated they never made any agreement with the Landlord regarding any deductions from the deposit. The Tenants acknowledge getting back \$2,180.00 at their forwarding address, but are seeking double the security deposit, due to the Landlord's breach of section 38 of the Act.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenants provided proof of registered mailing, showing they sent their forwarding address in writing to the Landlord on November 21, 2019. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this package 5 days after it was mailed, on November 26, 2019. Since the Tenants' vacated the rental unit on November 1, 2019, I find this reflects the end of the tenancy.

Given the above, I find the Landlord had until December 11, 2019, to either repay the security deposit to the Tenants (in full) or make a claim against it by filing an application for dispute resolution. The Landlord did neither and only returned a portion of the deposits. Accordingly, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord ( $2 \times \$2,400.00 = \$4,800.00$ ) less the amount already returned (\$2,180.00) pursuant to section 38(6) of the *Act*.

Pursuant to section 72 of the Act, and given the Tenants' were successful in their application, I award them recovery of the filing fee they paid for this application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$2,720.00, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and \$100.00 in recovery of the filing fee.

### Conclusion

I grant the Tenants a monetary order in the amount of \$2,720.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: May 01, 2020

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Residential Tenancy Branch