



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and the filing fee for the claim.

The tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 22, 2020, which was successfully delivered on January 30, 2020, a Canada post tracking number was provided as evidence of service. I have noted the tracking number on the covering page of this decision.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenants appeared, gave affirmed testimony, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit(s)?  
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### Background and Evidence

The tenancy began in 2017. Rent in the amount of \$1,920.00 was payable on the first of each month. A Deposit of \$925.00 was paid by the tenants. The tenants stated they also paid a pet damage deposit; however, that was returned when they no longer had a pet. Filed in evidence is an email that the landlord sent the tenants shows they are holding the above Deposit.

The tenants testified that they vacated the premises on December 31, 2019 . The tenants stated that they provided the landlord with a written notice of the forwarding at the move-out condition inspection which was written on the report. Filed in evidence is a copy of the move-out condition inspection report.

The tenants stated that they called the landlords office and sent emails; however, the received an email from the landlords that they were wanting them to pay for cleaning costs in the amount of \$1,857.00. Tenant stated they did not agree to pay this amount and question the validity of the cleaning invoices provided. \_Filed in evidence is an email, I have referred to this document in earlier in this decision.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(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.

(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.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on December 31, 2019. This is supported by a copy of the move-out condition inspection report.

I accept the undisputed testimony of the tenants that the landlord has not return the Deposit and that they did not give the landlord permission to retain any amount from the Deposit.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$1,950.00**, comprised of double the Deposit (\$925.00) on the original amounts held and to recover the \$100.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, 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, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

### Conclusion

The tenant's application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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: June 16, 2020

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Residential Tenancy Branch