



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, MNSD, FFT**

### Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary award for money owed or compensation for loss under the *Act* pursuant to section 67;
- a return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both the applicant tenants and the landlord attended the hearing. All parties were provided a full opportunity to present submissions and their sworn testimony.

Both parties confirmed receipt of all applicable documents and the landlord confirmed receipt of the tenants' application for dispute. I find all parties to have been served in accordance with the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

### Background and Evidence

The tenants explained this tenancy began on October 1, 2018 and ended on December 19, 2019. Rent was \$1,900.00 per month and a security and pet deposit of \$1,900.00 (in total) was paid at the outset of the tenancy. The tenants agreed to accept \$1,600.00 following the conclusion of the tenancy in satisfaction for a full return of both deposits.

The tenants are seeking a monetary award of \$2,953.87 representing a return of rent paid for December 2019 along with a penalty for the late return of their deposits pursuant to section 38 of the *Act*.

The tenants explained they paid rent for the entire month of December 2019 but vacated the property on December 19<sup>th</sup> as they had found a new home. The tenants testified that they provided their forwarding address in writing to the landlord on this date, agreeing to accept a return of \$1,600.00 rather the \$1,900.00 paid in deposits. The tenants said they received a cheque for \$1,600.00 on January 17, 2020. They noted this cheque was post-marked January 14, 2020 and printed on January 9, 2020.

The second element to the tenants' application concerned a return of a portion of rent paid for the month of December 2019. The tenants argued that because they had paid for the entire month of December, they should have been entitled to exclusive use of the unit for that period. They testified that the landlord immediately re-rented the suite for December 20, 2019 following their departure on December 19, 2019. The tenants' acknowledged giving up possession of their unit on December 19, 2019, however, they argued they did not feel comfortable knowing someone would be in the unit while they were paying for it and they requested that the keys be returned to them. The landlord informed them that this was not possible because the unit had been re-rented. The tenants sought \$753.87 as compensation for twelve days of lost access to the rental unit.

The landlord agreed with all aspects of the tenants' testimony, saying that it was her understanding that the terms of their agreement had been fulfilled and that the deposit had been returned in its entirety.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their claim for a monetary award.

As noted previously, the tenants sought a monetary award of \$2,953.87 representing loss of access to the rental unit and doubling of their security and pet deposit pursuant to section 38 of the *Act*.

*Residential Tenancy Policy Guideline #16* notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This *Guideline* continues by explaining, "the party who suffered the damage or loss can prove the amount of or value of the damage or loss."

I find the tenants have failed to demonstrate how they suffered a loss as a result of the landlord re-renting the suite after they formally ended the tenancy. While some arguments were presented regarding a loss of access to the suite, I find they waived their rights to the suite following a conclusion of the tenancy on December 19, 2019 after having provided the landlord with adequate notice of their intention to vacate the property pursuant to section 45 of the *Act*. The tenants were under no obligation to surrender possession of the rental unit on December 19, 2019, however, this date was accepted by the landlord and I find the landlord acted appropriately in accordance with the information provided to them at the time. For these reasons, I dismiss the portion of the tenants' application concerning loss of access to the rental unit.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's 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. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

While the landlord said that the deposit was returned following receipt of the tenants' forwarding address on December 19, 2019, I find the landlord failed to fulfil her obligation pursuant to section 38 of the *Act*. The landlord had until January 6, 2020 (15 days after December 19, 2019) to return the tenants' deposit, less the agreed upon \$300.00 deduction, in its entirety. Undisputed testimony from the tenants explained that the cheque containing their pet and security deposits was not received until January 17,

2020 after it was printed on January 9, 2020. No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address or following the conclusion of the tenancy. While I appreciate the efforts that were made to return the deposit in an expedient manner, the landlord failed to fulfil her obligation pursuant to section 38 of the *Act*.

In this case, because the landlord returned the agreed upon \$1,600.00 of the \$1,900.00 deposits, I award the tenants a monetary award of \$1,600.00 representing a doubling of the deposit, less any amount returned. Policy Guideline #17 notes, "the arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy."

As the tenants were partially successful in their application, I award the tenants half of the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order of \$1,650.00 to the tenants as follows:

ITEM	AMOUNT
Return of security and pet deposit pursuant to section 38, less agreed upon deductions and amount already returned	\$1,600.00
½ return of filing fee	50.00
<b>TOTAL =</b>	<b>\$1,650.00</b>

The tenants are provided with a Monetary 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: June 16, 2020

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Residential Tenancy Branch