



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDS-DR, FFT

### Introduction

On March 20, 2020, the Tenant applied for a Direct Request proceeding seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On April 15, 2020, this Application was set down for a Dispute Resolution participatory hearing to be heard on June 1, 2020 at 9:30 AM.

The Tenant attended the hearing; however, the Landlord did not attend the 26-minute teleconference hearing. All in attendance provided a solemn affirmation.

The Tenant submitted evidence that a Notice of Direct Request Proceeding and evidence package was served to each Landlord by registered mail on March 28, 2020 (the registered mail tracking numbers are on the first page of this Decision). The registered mail tracking histories indicate that both of these packages were received.

Furthermore, she advised that the subsequent Notice of Hearing package was served to each Landlord at their respective email addresses on April 20, 2020. She stated that she then received an email from Landlord K.N. on April 21, 2020 stating, “Hey, I hope you are well. Are we settling something else?” Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Landlords were served the Notice of Hearing packages on April 21, 2020.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on June 1, 2016 and ended when she gave up vacant possession of the rental unit on February 29, 2020. Rent was established at an amount of \$2,650.00 per month and was due on the first day of each month. A security deposit of \$1,325.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that she provided her forwarding address to the Landlords via an email dated March 3, 2020 and she submitted a copy of this email as documentary evidence. The email address that she used for service of this forwarding address is the same email address she used for service of the Notice of Hearing package. She stated that she received an email back from the Landlord on March 3, 2020 stating, "Thank you. Do you have the mailbox key?" She advised that she replied to the Landlord telling her where the mailbox key was left, and she never received a response from the Landlord after this.

She advised that her security deposit was electronically transferred back to her on March 31, 2020, after the Landlords had received the Notice of Direct Request Proceeding and evidence packages that were sent by registered mail on March 28, 2020.

After she served the Notice of Hearing packages to the Landlords by email on April 20, 2020, she received the email from Landlord K.N. on April 21, 2020 stating, "Hey, I hope you are well. Are we settling something else?" She stated that she sent an email back to the Landlords thanking them for returning the security deposit and informing them that there was still a dispute over the filing fee; however, she did not receive any further correspondence from the Landlords. While the Landlords did eventually return her security deposit on March 31, 2020, as they did not comply with Section 38 of the *Act*

with respect to dealing with this deposit accordingly, she is seeking an additional **\$1,325.00** that she is entitled to claim for pursuant to this Section.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the Tenant provided evidence that she provided a forwarding address to the Landlords on March 3, 2020 and then provided solemnly affirmed testimony that she received an email response from Landlord K.N. approximately three hours later. As such, I am satisfied that the Landlords received the Tenant's forwarding address on March 3, 2020. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlords must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlords to retain the deposit without the Tenant's written consent.

As the Landlords had received the Tenant's forwarding address, they had 15 days from March 3, 2020 to either return the deposit in full or make an Application through the Residential Tenancy Branch to keep the deposit. However, the only action the Landlords took was to return the deposit on March 31, 2020, after receiving the Tenant's Notice of Direct Request Proceeding package by registered mail.

Based on the totality of the evidence before me, as the Tenant did not provide written authorization for the Landlords to keep any amount of the deposit, and as the Landlords did not return the deposit in full or make an Application to keep the deposit within 15 days of March 3, 2020, I find that the Landlords illegally withheld the deposit contrary to the *Act*, and did not comply with the requirements of Section 38. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a monetary award in the amount of \$2,650.00. However, as the Tenant has already been paid back the amount of her security deposit, I grant the Tenant an actual monetary award in the amount of **\$1,325.00**.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlords to the Tenant**

|  |                   |
|--|-------------------|
| Doubling of the security deposit                         | \$2,650.00        |
| Less the amount of the security deposit already returned | -\$1,325.00       |
| Recovery of filing fee                                   | \$100.00          |
| <b>TOTAL MONETARY AWARD</b>                              | <b>\$1,425.00</b> |

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,425.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 1, 2020

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Residential Tenancy Branch