



# 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 pursuant to the Tenants' Application for Dispute Resolution, made on January 20, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by S.X. who provided affirmed testimony. The Landlords did not attend the hearing.

On behalf of the Tenant, S.X. testified the Notice of Dispute Resolution Proceeding package was served on each of the Landlords by registered mail on January 23, 2020. Canada Post registered mail documents were submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find these documents are deemed to have been received by the Landlords on January 28, 2020.

S.X. was given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 Landlords return all or part of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The tenancy agreement submitted into evidence by the Tenants confirms the tenancy began on July 1, 2017. S.X. testified the tenancy ended on December 30 or 31, 2018. S.X. testified the Tenants paid a security deposit of \$950.00 and a pet damage deposit of \$500.00. However, the Landlords has returned only \$472.05 to the Tenants.

On behalf of the Tenants, S.X. testified that the Tenants provided a forwarding address in writing and requested the return of \$977.95 (the amount withheld by the Landlords) in a type-written letter dated December 28, 2019. A copy of the letter was submitted into evidence. S.X. testified the letter was sent to the Landlords by registered mail on December 28, 2019. Canada Post registered mail documents submitted confirm delivery of this correspondence on December 30, 2019, but S.X. confirmed the document was not received by the Landlords.

The Tenants also sought to recover the filing fee paid to make the Application.

### 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 deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving 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 amount of the deposits. The language in the *Act* is mandatory.

Section 39 of the *Act* confirms that a tenant has one year following the end of a tenancy to give a forwarding address to a landlord. Failure to do so results in a landlord being entitled to keep the security deposit or pet damage deposit, or both, and the tenant's right to the return of the security deposit is extinguished.

After considering the evidence and submissions of S.X., I find it is more likely than not that the tenancy ended on December 31, 2018. Further, S.X. testified and I find that a forwarding address in writing was sent to the Landlords by registered mail on December 28, 2019. Although the Canada Post documentation submitted indicates the letter was delivered on December 30, 2019, it does not confirm receipt. Indeed, S.X. testified the Landlords did not pick up the registered mail package. As a result, I rely on the deemed service provisions found in sections 88 and 90 of the *Act*. That is, documents served by registered mail are deemed to be received five days later. In this case, I find the Tenants' forwarding address is deemed to have been received by the Landlords on January 2, 2020, five days after it was sent to the Landlords by registered mail. Accordingly, I find the Tenants' forwarding address in writing was not received by the Landlords within one year after the end of the tenancy. As a result, the Landlords became entitled to retain the security and pet damage deposits held and the Tenants' right to have them returned was extinguished.

In light of the above, I find that the Application is dismissed without leave to reapply.

### Conclusion

The Application is dismissed without leave to reapply.

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 15, 2020

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Residential Tenancy Branch