



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFT

### Introduction

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

- authorization to obtain a return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlords.

The landlords did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that they served their application for dispute resolution and evidence on each of the landlords by registered mail sent on January 25, 2020. The tenant provided valid Canada Post tracking information as evidence of service. Based on the evidence I find that each of the landlords is deemed served with the tenants' materials on January 30, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began in October, 2019. The monthly rent was \$700.00 payable on the 20<sup>th</sup> of each month. A security deposit of \$700.00 was paid at the start of the tenancy and is still held by the landlord. There was no condition inspection report prepared at any time for this tenancy.

The tenancy ended on December 31, 2019 and the tenants provided a written forwarding address to the landlord by a letter dated January 4, 2020. The tenants did not consent to any deductions from the security deposit.

### 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.

Section 19 of the *Act* provides that a landlord must not require or accept a security deposit that is greater than the equivalent of  $\frac{1}{2}$  of one month's rent and a deposit greater than that amount is considered an overpayment. Accordingly, I find that the \$700.00 paid at the start of the tenancy consists of a security deposit of \$350.00, the equivalent of  $\frac{1}{2}$  of the monthly rent and an overpayment of \$350.00. As the tenant is entitled to a return of the overpayment I issue a monetary award in the tenant's favour in the amount of \$350.00.

Section 38 of the *Act* requires the landlord to either return the 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence that this tenancy ended on December 31, 2019 and the tenants provided a forwarding address in writing by a letter dated January 4, 2020. The landlords did not return any portion of the security deposit to the tenants nor did they file an application for dispute resolution for authorization to retain the deposit within 15 days of January 4, 2020 as provided under the *Act*.

Furthermore, the tenants gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$700.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,150.00 against the landlords on the following terms:

<b>Item</b>	<b>Amount</b>
Return of Overpayment	\$350.00
Double Security Deposit (2 x \$350.00)	\$700.00
Recovery of Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$1,150.00</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 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 16, 2020

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Residential Tenancy Branch