



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSDS-DR FFT

### **Introduction**

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

- their security deposit pursuant to section 38; and
- the filing fee for this application pursuant to section 72.

This application was reconvened from a non-participatory direct request proceeding in an interim decision made May 26, 2020.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:50 am in order to enable the landlords to call into this teleconference hearing scheduled for 9:00 am. The tenants attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

Tenant SB testified that he served the Notice of Direct Request Proceeding forms and supporting evidence to the landlords by email on May 25, 2020. He testified he sent it to two email address of the landlords: one that landlord IT used to notify the tenants of the end of the tenancy in December 2019, and the other that the landlords and the tenants used to communicate when the tenants are out of the country. He testified that the parties usually communicate by phone or text message.

SB testified that he served the interim decision on the landlords to these same to email address on May 30, 2020.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be served in accordance with sections 88 and 89 of the Act may be sent by e-mail and is considered received if:

- the person acknowledges having received the e-mail;

- the person replies to the e-mail; or
- the sender and recipient e-mail addresses have been routinely used for tenancy matters.

Upon hearing SB's testimony, I am satisfied the email addresses the tenant's documents were sent to are routinely used for tenancy matters. As such, I deem the landlords served with the required documents three days after they were emailed.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) a monetary order of \$1,160 representing repayment of two times the security deposit;
- 2) recover their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the tenants, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The parties entered into a written, tenancy agreement starting October 1, 2013. At the end of the tenancy monthly rent was \$1,200. The tenants paid the landlords a security deposit of \$580 (the "**Deposit**"), which the landlords continue to hold in trust for the tenants. I note that the tenancy agreement specifies that the Deposit is \$575. However, SB testified that the tenants paid \$580 to the landlords for the Deposit. He submitted into evidence a copy of a receipt issued by the landlords for the Deposit which corroborates his testimony.

The tenancy ended on March 29, 2020.

The tenants provided the landlords with their forwarding address on April 23, 2020 via registered mail (the Canada Post Tracking Number is reproduced on the cover of this decision).

SB testified that the tenants attended the rental unit at the agreed upon time to conduct the move-out condition inspection, but that the landlords did not attend. He testified that landlord IT told them to conduct the inspection and fill out the condition inspection report on their own and to provide her with a copy.

SB testified that, to date, the landlords have not returned the Deposit. He testified that, to his knowledge, the landlords have not applied to the Residential Tenancy Branch to keep the Deposit.

## **Analysis**

Section 38(1) of the Act states:

### **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.

Based on the testimony of SB, I find that the tenancy ended on March 29, 2020 and that the tenants provided their forwarding address in writing to the landlord on April 23, 2020.

I find that the landlords have not returned the Deposit to the tenants within 15 days of receiving their forwarding address, or at all.

I find that the landlords have not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

Accordingly, I find that the landlords have failed to comply with their obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim a Deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I order that they pay the tenants double the amount of the Deposit (\$1,160).

As the tenants have been successful in their application, they are entitled to have their filing fee of \$100.00 repaid by the landlords.

**Conclusion**

Pursuant to sections 62 and 72 of the Act, I order that the landlords pay the tenants \$1,260, representing payment of the filing fee and of double the Deposit.

The tenants must serve the landlords with a copy of this decision and attached order as soon as possible upon receiving it.

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 19, 2020

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Residential Tenancy Branch