



# 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:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant F.J. 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 tenant F.J. and I were the only ones who had called into this teleconference.

Tenant F.J. testified that the subject rental property is a cottage on the same parcel of land as the landlord's main house and that the homes are separate and apart but have the same mailing address. Tenant F.J. testified that the cottage did not have mail delivered to it and that all mail was delivered to the landlord's main house and the landlord gave the tenants their mail. Tenant F.J. testified that she served the landlord with her application for dispute resolution via registered mail on February 7, 2020. Tenant F.J. entered into evidence a Canada Post receipt evidencing same. I find that the landlord was deemed served with the tenants' application for dispute resolution on February 12, 2020, in accordance with sections 89 and 90 of the *Act*.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of tenant F.J., not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Tenant F.J. provided the following undisputed testimony. This tenancy began on August 23, 2019 and ended on October 31, 2019. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$350.00 were paid by the tenants to the landlord. An e-transfer record indicating same was entered into evidence.

Tenant F.J. testified that she provided the landlord with her forwarding address in writing via registered mail on November 4, 2019. A Canada Post receipt evidencing same was entered into evidence.

Tenant F.J. testified that she did not authorize the landlord to retain any portion of her deposits and that the landlord refused to return her deposits. Tenant F.J. entered into evidence messenger communications between herself and the landlord in which the landlord refuses to return the tenants' deposits.

The landlord did not file an application with the Residential Tenancy Branch seeking authority to retain the tenants' deposits.

### Analysis

Section 38 of the Act requires the landlord to either return the tenants' security deposit and pet damage deposit or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a 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 and pet damage deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the landlord was deemed served with the tenants' forwarding address in writing on November 9, 2019, five days after its mailing, in accordance with sections 88 and 90 of the *Act*. I find that the landlord did not return the tenants' deposits or file an application with the Residential Tenancy Branch for authority to retain the deposits, within 15 days of November 9, 2019. Therefore, the tenants are entitled to receive double their security deposit and pet deposit as per the below calculation:

\$700.00 (security deposit) \* 2 (doubling provision) = \$1,400.00

\$350.00 (pet damage deposit) \* 2 (doubling provision) = \$700.00

**Total = \$2,100.00**

As the tenants were successful in their application for dispute resolution, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$2,200.00.

The tenants are provided with this 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 28, 2020

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Residential Tenancy Branch