



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the tenants) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and the filing fee for the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the tenants entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The parties agreed that the tenancy began on September 1, 2020. Rent in the amount of \$3,000.00 was payable on the first of each month. A security deposit of \$1,500.00 was paid by the tenants. The tenancy ended on April 30, 2020.

The parties agreed that the landlord had received the tenants’ forwarding address on May 2, 2020. The tenant testified that the landlord did not return any of the security deposit.

The landlord testified that the tenants broke the shower door and they agreed they were responsible for the damage. The landlord stated that they originally agreed to accept \$500.00 for the damage; however, the estimate was for the wrong door and the amount was considerable higher. The landlord stated they claimed against the security deposit with their application was filed on June 9, 2020.

The tenant testified that that they only agreed to the amount of \$500.00 if the balance was returned; however, the landlord later wanted more, which they did not agree to, and they believe they were not responsible for the damage.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, there was a damage shower door, that issue is not before me and is scheduled for a future hearing.

In this matter, I must determine whether the landlord has complied with section 38 of the Act.

In this case, it appears there was an agreement during the tenancy that the landlord could keep \$500.00 of the security deposit for the broken shower door and the balance of the deposit of \$1,000.00 would be returned to the tenants. However, that agreement was not honoured by the landlord as they discovered the cost of the shower door was more than the original quote and the landlord retained the full security deposit.

I find it not necessary to determine if this agreement is binding on the parties because even if it was, it would not change the outcome of this decision as the landlord did not have the consent of the tenants to withhold any amount greater than the \$500.00 for the shower door.

Under the Act, the landlord was required to return the balance within 15 days of receiving the tenants forwarding address or make their application for dispute resolution within the 15 days. The landlord did not do either.

While the landlord did make an application for dispute resolution it was not made until June 9, 2020, which was not within the 15 days required under section 38 of the Act.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep the full Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$3,100.00**, comprised of double the security deposit (\$1,500.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

**As there is a future hearing on the landlord's claim on the broken shower, I make no findings on this issue at this hearing. It will be up the next Arbitrator to determine if the original agreement is binding on the parties or if the landlord is entitled to damages as claimed.**

#### Conclusion

The tenant's' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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: July 06, 2020

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Residential Tenancy Branch