



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD-DR, FFT

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenant stated that each of the landlords were served with the notice of hearing package via Canada Post Registered Mail on July 29, 2020 and has submitted copies of the Canada Post Receipt and Tracking Label as confirmation. The tenant also stated that the submitted documentary evidence was served to the landlords in person on July 26, 2020.

I accept the undisputed affirmed evidence of the tenant and find that the landlords were properly served as per sections 88 and 89 of the Act. Despite not attending the landlords are deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2019 on a fixed term tenancy ending on May 31, 2020 as per the submitted copy of the signed tenancy agreement dated May 27, 2019. The tenant provided details stating that the tenancy ended on July 5, 2020. The monthly rent was \$2,200.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,100.00 was paid on May 27, 2019.

The tenant seeks a monetary claim for return of \$1,200.00 for:

\$1,100.00	Security Deposit
\$100.00	Filing Fee

The tenant stated that her forwarding address for return of the \$1,100.00 was provided on the day of the move-out inspection and written on the Condition Inspection Report for the Move-out on July 5, 2020 as shown by the submitted photograph.

The tenant stated that she has not been served with notice of dispute by the landlord seeking to retain the security deposit nor has she given permission to the landlord to retain it.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept undisputed affirmed evidence of the tenant and find that the tenant has established a claim for return of the \$1,100.00 security deposit. The tenant provided undisputed affirmed testimony that the tenancy ended on July 5, 2020; the landlords were provided with the tenant's forwarding address in writing on July 6, 2020 on the condition inspection report completed with the landlords; the landlords still retain the entire security deposit; the landlords have not served the tenant with an application to retain the security deposit; and the landlords were not given permission by the tenant to retain it.

I also find that the landlords having failed to comply with section 38(1) is subject to 38 (6) of the Act. The landlords have not filed an application to retain the security deposit and have failed to return the \$1,100.00 security deposit within the allowed 15 days. The landlords are liable for an amount equal to the \$1,100.00 security deposit.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$2,300.00.

This order must be served upon the landlords. Should the landlords 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.

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: August 31, 2020

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Residential Tenancy Branch