



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of double the security deposit and the pet damage deposit (the deposits).

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declares that on July 27, 2020, the tenants sent each of the respondents the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the respondents are deemed to have been served with the Direct Request Proceeding documents on August 1, 2020, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Landlord B.K. and the tenants on August 27, 2017, indicating a monthly rent of \$1,375.00, a security deposit of \$650.00, and a pet damage deposit of \$650.00, for a tenancy commencing on October 1, 2017;

- A copy of a notice to vacate dated May 27, 2020, indicating the tenancy would end as of June 30, 2020 and providing the forwarding address for the return of the deposits;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 12:23 pm on May 28, 2020;
- A copy of an outgoing e-mail from the tenants to the landlord dated May 28, 2020, containing the notice to end tenancy with forwarding address as an attachment;
- A copy of a reply e-mail from the landlord also dated May 28, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposits paid by the tenants and indicating the tenancy ended on June 30, 2020.

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$650.00 and a pet damage deposit in the amount of \$650.00, as per the tenancy agreement.

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be "signed and dated by both the landlord and the tenant."

I find that Landlord N.N. has not signed the tenancy agreement, which is a requirement of the direct request process.

For this reason, I will only proceed with the portion of the tenants' application naming Landlord B.K., who signed the tenancy agreement.

I accept the following declarations made by the tenants on the Monetary Order Worksheet:

- The tenants have not provided consent for Landlord B.K. to keep all or part of the deposits;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

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

The tenants submitted a copy of an e-mail sent to Landlord B.K. on May 28, 2020 providing their notice to end tenancy as well as their forwarding address. The tenants provided a copy of a reply e-mail from Landlord B.K. also dated May 28, 2020.

Based on the written submissions of the tenants and in accordance with the Director's Order, I find that Landlord B.K. has been served with the Direct Request Proceeding documents on May 28, 2020.

I find that the tenancy ended on June 30, 2020, the date indicated on the tenants' notice to vacate.

I accept the evidence before me that Landlord B.K. has failed to return the deposits to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposits by July 15, 2020, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that Landlord B.K. must pay the tenants double the amount of the security deposit and the pet damage deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$2,600.00, the amount claimed by the tenants for double the security deposit and the pet damage deposit, as of the date of this application, July 23, 2020.

As the tenants were partially successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2,700.00 for the return of double the security deposit and the pet damage deposit and for the recovery of the filing fee for this application. The tenants are provided with this Order in the above terms and Landlord B.K. must be served with **this Order** as soon as possible. Should Landlord B.K. 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.

I dismiss the portion of the tenants' application for a Monetary Order naming Landlord N.N. as a respondent without leave to reapply.

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 4, 2020

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Residential Tenancy Branch