



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT INC.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNSDB-DR FFT

### Introduction

In this dispute, the tenants sought the return, and doubling, of their security and pet damage deposits pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the “Act”). In addition, they sought recovery of the filing fee under section 72 of the Act.

The tenants filed an application for dispute resolution on July 31, 2020 and an arbitration hearing was held September 11, 2020. The tenants and the landlord’s agent attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

### Issues

1. Are the tenants entitled to compensation for the return of their security and pet damage deposits?
2. If yes, are they also entitled to a doubling of that compensation?
3. Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

By way of background, the tenancy began on June 15, 2019 and ended on June 30, 2020. Monthly rent was \$1,700.00 and the tenants paid a security deposit of \$850.00 and a pet damage deposit of \$850.00. A copy of the written tenancy agreement was submitted into evidence.

The tenants testified that they provided, in writing, their forwarding address to the landlord by including it in the Condition Inspection Report that was completed on June 26, 2020. A copy of this Report was submitted into evidence. There were no issues with the rental unit and the landlord agreed to return both the security and pet damage deposits.

A few weeks went by, and the tenants did not receive anything from the landlord. So, they contacted the landlord's agent by email who said that the landlord had issued a cheque on July 7, 2020, but that there must be a delay with Canada Post. More weeks passed, and the tenants eventually filed for dispute resolution after not receiving a cheque in the mail. The tenants confirmed that they regularly checked the mail at the address to which the deposits were to be sent, but that no mail ever came.

It should be noted, however, that not long after the tenants filed for dispute resolution, they received a cheque (different than the original cheque purportedly issued by the landlord) by way of expedited post. This cheque, which is currently being held by the tenants and has not yet been cashed, is in the amount of \$1,700.00.

The landlord's agent (the "landlord") indicated that the tenants' description of events was accurate. She gave evidence that she completed the procedures required to have the cheque issued, including entering information into a database. The landlord's Toronto office will then, once that information is entered, issue a cheque. The landlord's agent explained that she does not actually issue the cheques herself. Further, in most cases, the Toronto office does a "cheque run" at the end of the month, when many cheques are sent to former tenants.

The landlord further noted that cheques are ordinarily sent by Canada Post regular mail.

Submitted into evidence by the tenants were copies of email conversations with the landlord about the cheque and its whereabouts. A copy of the landlord's "Statement of Account" was submitted into evidence, and which indicates that a cheque in the amount of \$1,700.00 was issued on July 7, 2020.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Claim for Security and Pet Damage Deposits**

Section 38(1)(a) to (c) of the Act states the following regarding security and pet damage deposits:

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; [. . .]

In this case, the landlord received the tenants' forwarding address in writing on or about June 26, 2020 for a tenancy that ended on June 30, 2020. Thus, the landlord had until, and no later than, July 15, 2020 to repay the security and pet damage deposits. Where a tenant makes a claim against a landlord that the landlord did not comply with section 38(1) of the Act, the onus then falls on the landlord to prove, on a balance of probabilities, that they in fact repaid the tenants.

The tenants testified that they never received the cheque that was presumably issued on July 7, 2020. The landlord testified that she did everything she was responsible for at her end, and that the Toronto office presumably issued the cheque on July 7, 2020. However, there is no documentary evidence, such as a Canada Post receipt, to establish that the cheque was actually mailed. Nor were there any witnesses from the Toronto office to testify that they physically printed and mailed the cheque.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to establish that they (the corporate landlord, not the agent) mailed the cheque to the tenants. The entry in the Statement of Account does not, I find, prove that a cheque was mailed; only the Toronto office would have first-hand knowledge of what events may have transpired.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim that the landlord did not repay their security and pet damage deposits within 15 days of the end of the tenancy. Therefore, the tenants are awarded \$1,700.00 pursuant to section 38(1) of the Act.

Section 38(6) of the Act states that

(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.

Here, as the landlord did not comply with subsection 38(1) of the Act, the landlord must pay the tenants double the amount of the security and pet damage deposits, for a total of \$3,400.00. However, given that the landlord subsequently sent the tenants a cheque in the amount of \$1,700.00, and as the tenants have not yet cashed that cheque, this amount is offset from the award.

### **Claim for Filing Fee**

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicants were successful, I grant their claim for reimbursement of the filing fee.

### **Summary of Award**

In summary, I grant the tenants compensation in the amount of \$1,800.00. A monetary order for this amount is issued in conjunction with this decision (to the tenants only).

The tenants are authorized and ordered to cash the cheque in the amount of \$1,700.00 that is presently in their possession.

Conclusion

I hereby grant the tenants' application.

I grant the tenants a monetary order in the amount of \$1,800.00, which must be served on the landlord. Should the landlord fail to pay the tenants the amount owed, the tenants may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated pursuant to section 9.1(2) of the Act.

Dated: September 11, 2020

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Residential Tenancy Branch