



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-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 the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 2, 2020, the tenants sent the landlord 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 landlord is deemed to have been served with the Direct Request Proceeding documents on September 7, 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 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 the landlord and the tenants on May 2, 2019, indicating a monthly rent of \$1,450.00 and a security deposit of \$725.00, for a tenancy commencing on May 1, 2019;

- A copy of an e-mail from the tenants to the landlord dated June 28, 2020, providing the forwarding address and requesting the return of the deposit;
- 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 6:56 pm on June 28, 2020;
- A copy of an e-mail from the landlord dated June 28, 2020, replying to the tenants' forwarding address e-mail; 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 deposit paid by the tenants, a deduction of \$100.00 authorized by the tenants, and a partial amount of \$325.00 reimbursed by the landlord. The Monetary Order Worksheet indicates that 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 \$725.00 as per the tenancy agreement.

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

- The tenants have not provided consent for the landlord to keep more than \$100.00 of the deposit;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenants sent their forwarding address to the landlord by e-mail, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied

that the landlord received the tenants' forwarding address on the day the landlord replied to the tenants' e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on June 28, 2020.

I accept the tenants' statement on the Monetary Order Worksheet that the tenancy ended on June 30, 2020.

I accept the evidence before me that the landlord has failed to return the full deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain a portion of the deposit by July 15, 2020, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenants double the amount of the security deposit in accordance sections 38(6) of the *Act*.

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

Therefore, as of the date of this application, August 29, 2020, I find that the tenants are entitled to a monetary award in the amount of \$1,025.00, calculated as follows:

<b>Item</b>	<b>Amount</b>
Amount of Deposit paid less authorized deduction (\$725 - \$100)	\$625.00
Doubled amount of deposit to be returned	\$625.00
Amount returned by the landlord	-\$325.00
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award to Tenants</b>	<b>\$1,025.00</b>

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1,025.00 for the return of double the security deposit and for the recovery of the filing fee for this application. 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: September 08, 2020

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Residential Tenancy Branch