



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNSD-DR, FFT

### Introduction

On June 16, 2020 a hearing was conducted via the direct request process between these two parties. The tenants served the landlord via email on June 9, 2020 with the notice of direct request package seeking a monetary order seeking return of the security deposit. The tenants were granted a monetary order for return of double the security deposit and recovery of the filing fee. The landlord applied for a review of this decision. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the landlords' application on August 26, 2020.

This is a review hearing granted for the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of a review hearing and the review decision via Canada Post Registered Mail. The landlord confirmed that no documentary evidence was submitted. Both parties confirmed the tenants served the landlord with their submitted documentary evidence via Canada Post Registered Mail on September 9, 2020. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to 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.

The tenants seek a monetary claim of \$1,600.00 for return of the security deposit and recovery of the \$100.00 filing fee.

Both parties confirmed the tenancy ended on October 28, 2019.

The tenants stated that their forwarding address in writing for return of the \$1,500.00 security deposit was served to the landlord on December 5, 2019 via Canada Post Registered Mail. The landlord disputes this claiming none was received. The tenants referenced their evidence submission, "DepositRequest2" (a screen shot of an email dated November 30, 2019). It states in part,

*Neither M.B. nor I have heard from you in response to our previous emails and text messages.*

*A Landlord is required to return the entire security deposit, within 15 days, unless an arbitrator agrees the landlord can keep the deposit. We were verbally promised the return of our deposit on October 28, 2019; over four weeks ago.*

*Due to your lack of response I feel we have no recourse but to apply for dispute resolution from the Residential Tenancy Branch. I'm sure you aware the act states, if a Landlord has not meet these obligations, the Landlord may be ordered to may original deposit plus filing fees...*

[reproduced as written]

The tenants stated that this evidence is not what he was looking for, however, the tenants also stated that a second attempt providing their forwarding address in writing for return of the security deposit was sent via email on June 9, 2020. The landlord disputes this claim. The tenant referred to evidence submission, "DepositReqeust1" which is dated November 28, 2019 and states in part,

We don't agree with the fees stated in your email below.

*Can I ask Jacob to send us the full \$1,500 by tomorrow or we will seek recourse as stated in Mark's email that you should have received by now.*

[reproduced as written]

The tenants also referred to two other evidence files submitted, "All Text Correspondence" and "etransfer 2019-11-28" stating that these were obviously not what he is looking for.

### Analysis and Conclusion

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, it appears that the tenants are pre-mature with their application for return of the security deposit. The tenants were unable to provide any supporting evidence that they provided their forwarding address in writing for return of the security deposit to the landlord. As such, the tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: October 13, 2020

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Residential Tenancy Branch