



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, pursuant to section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The landlord confirmed receipt of the application and evidence (the materials) and did not serve any response evidence. Based on the testimonies I find that the landlord was served with the materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Are the tenants entitled to:

01. an order for the landlord to return the security deposit?
02. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

Rule of Procedure 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on June 01, 2020 and ended on August 08, 2020. Monthly rent was \$900.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$450.00 was collected. The landlord returned \$100.00 and still holds \$350.00.

Both parties also agreed the tenants' forwarding address was provided in writing on August 26, 2020. A copy of the text message containing the forwarding address was submitted into evidence.

The tenants affirmed they authorized the landlord to retain \$50.00 from the deposit, but the landlord retained \$350.00 and only returned \$100.00. The text message submitted into evidence by the tenant states: "Take \$50 and return \$400 or I will file a dispute first thing tomorrow morning."

The landlord affirmed she withheld this amount for cleaning because the tenants did not leave the rental unit in the same condition as when the tenancy started.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Based on the landlord's testimony, I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*.

Pursuant to section 38 of the *Act*, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (1) 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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[...]

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.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

-if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

-if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ( $\$400 - \$100 = \$300$ ;  $\$300 \times 2 = \$600$ ).

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of

the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).

I accept the undisputed testimony and documentary evidence that the tenancy ended on August 08, 2020, the tenants gave the landlord written notice of their forwarding address on August 26, 2020 and that the landlord only returned \$100.00, thus withholding the security deposit balance in the amount of \$350.00.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find the tenants are entitled to a monetary award of \$750.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenants application is successful, I award the tenants the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$450.00 security deposit	900.00
Minus amount returned	100.00
Minus amount authorized	50.00
Subtotal	750.00
Section 72 - Reimbursement of filing fee	100.00
<b>TOTAL</b>	<b>850.00</b>

### Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenants a monetary order in the amount of \$850.00

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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: October 28, 2020

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Residential Tenancy Branch