



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the tenants with an opportunity to ask questions. The tenants are referenced throughout in the singular.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on September 10, 2020 and deemed received by the landlord under section 90 of the *Act* 5 days later, that is, on September 15, 2020.

The tenant provided the Canada Post Tracking Number in support of service by registered mail. Considering the tenant's testimony and supporting evidence, I find the tenant served the landlord as required by the *Act* with the Notice of Hearing and Application for Dispute Resolution on September 15, 2020.

This hearing followed a direct request proceeding reconvened in accordance with section 74 of the *Act*. The matter was referred to a participatory hearing to be conducted by an arbitrator appointed under the *Act* in order to determine the details of the tenants' application with respect to providing their forwarding address to the landlord

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Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return double the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant submitted the following relevant evidentiary material in support of testimony:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on April 22, 2019, indicating a monthly rent of \$3,900.00, a security deposit of \$1,950.00, and a pet damage deposit of \$1,950.00, for a tenancy commencing on June 1, 2019;
- A copy of a Condition Inspection Report which was signed by the tenants on August 5, 2020, indicating the tenants provided a forwarding address at the time of the move-out inspection;
- 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 July 31, 2020;
- A copy of a Proof of Service form confirming that the tenant provided their forwarding address in writing to the landlord on July 31, 2020.

The tenant testified they agreed that the landlord retain \$861.00 of the security deposit. The landlord stated he would return the balance of the deposits to the tenant and never did so. The tenant claimed **\$3,039.00** is the total deposits owed to them calculated as follows:

ITEM	AMOUNT
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Security deposit	\$1,950.00
Pet Deposit	\$1,950.00
(Less agreed upon deduction)	(\$861.00)
Total security deposit and pet deposit	\$3,039.00

The tenant requested a monetary award of double the deposits for the landlord's failure to return the deposits within 15 days of the provision of the forwarding address. The tenant requested reimbursement of the filing fee. The total award of **\$6,178.00** is requested by the tenant calculated as follows:

ITEM	AMOUNT
Deposits (above)	\$3,039.00
Doubling of security deposit - section 38(6)	\$3,039.00
Reimbursement of filing fee – section 72	\$100.00
Monetary Award Requested	\$6,178.00

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.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value the deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the deposit for any damage to the rental unit pursuant to section 38(1)(d) of the Act. I find the tenant provided a deposit of \$1,950.00 and a pet deposit of \$1,950.00. I accept the tenant's evidence the parties agreed that \$861.00 could be retained by the landlord.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the Act. I accept the tenant's credible testimony supported by documentary evidence and find the tenant served the landlord with the forwarding address on July 31, 2020 as shown in the Condition Inspection Report on moving out.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act, I find that the tenant is entitled to return of a security deposit and pet deposit in the total amount of **\$3,039.00**. I also find the tenant is entitled to a monetary award of double the security deposit as well as reimbursement of the filing fee, for a total monetary order of **\$6,178.00**

A summary of the calculation of the deposits is:

ITEM	AMOUNT
Deposit	\$1,950.00
Pet Deposit	\$1,950.00
(Less agreed upon deduction)	(\$861.00)
Total security deposit and pet deposit	\$3,039.00

The calculation of the final award is:

ITEM	AMOUNT
Deposits	\$3,039.00
Doubling of security deposit - section 38(6)	\$3,039.00
Reimbursement of filing fee – section 72	\$100.00
Monetary Award	\$6,178.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$6,178.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Courts of the Province of British Columbia 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: December 13, 2020

Residential Tenancy Branch