



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Living  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDB-DR, 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, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

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.

The tenants served the application and evidence by registered mail on October 01, 2020. A second package with extra evidence was mailed on October 23, 2020. The landlord confirmed receipt of both packages.

The landlord served his evidence by email on January 27, 2021. The tenants confirmed receipt of the landlord's response evidence on January 28, 2021.

The tenants served the application and their evidence in accordance with section 89(1)(c) of the Act. The landlord sufficiently served his response evidence in accordance with section 71(2)(b) of the Act on January 28, 2021.

### Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the security deposit?
2. 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 the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in January 2018 and ended on August 31, 2020. Monthly rent was \$1,446.02 due on the first day of the month. At the outset of the tenancy a security deposit of \$687.50 and a pet damage deposit of \$687.50 were collected.

Both parties also agreed the tenants' forwarding address was provided in writing on August 31, 2020.

The tenants' application was filed on September 28, 2020. The tenants received a cheque dated September 14, 2020 returning the security and pet damage deposit in the amount of \$1,375.00 in mid-October 2020.

The landlord stated the cheque was mailed around September 14, 2020. Later the landlord affirmed it was mailed on October 01, 2020. Then the landlord said he is not sure when the cheque was mailed.

### Analysis

I accept the undisputed testimony that on August 31, 2020 the tenancy ended and the landlord received the tenants' forwarding address in writing. Per section 38(1) of the Act, the landlord had to return the deposit by September 15, 2020.

Section 38 of the Act states:

- (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.

I also accept the tenants' testimony that their \$1,375.00 deposit was repaid in mid-October 2020, well after the September 15, 2020 deadline. The cheque is dated September 15, 2020 and the landlord was unable to confirm when the cheque was mailed. The landlord did not claim to have post-dated the cheque and mailed it prior to September 15, 2020. Thus, on a balance of probabilities I find the landlord did not return the deposits within the 15 day deadline. Pursuant to section 38(6) of the Act, the landlord must pay the tenants double the value of the deposit:

- 38(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 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; in section B it states:

10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

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 \$1,375.00.

Over the period of this tenancy, no interest is payable on the deposit.

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

In summary:

<b>ITEM</b>	<b>AMOUNT \$</b>
Section 38(6) - doubling of \$1,375.00 security and pet deposits	2,750.00
Minus amount returned	-1,375.00
Section 72 - Reimbursement of filing fee	100.00
<b>TOTAL</b>	<b>1,475.00</b>

### Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenants a monetary order in the amount of \$1,475.00.

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: February 23, 2021

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Residential Tenancy Branch