



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 9, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of double the security and pet deposit

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt (but did not know the date) of the Tenants Notice of Dispute Resolution Proceeding, and application package. The Tenant confirmed it was sent by registered mail on October 29, 2020, and the Tenant sent her evidence separately. Pursuant to section 89 and 90 of the Act, I find this package was deemed served on November 3, 2020, 5 days after it was sent.

The Tenant sent her evidence by registered mail on January 29, 2021. As stated in the hearing, the Tenant was required to serve this evidence to the Landlord no later than 14 days before the hearing. As this was not done, I find the Tenants evidence package is not admissible. The Tenant provided oral testimony instead.

The Landlord stated he sent his evidence by email. The Tenant denied getting any evidence via email. As stated in the hearing, the Landlord's evidence is not admissible, as he has failed to sufficiently demonstrate that he served his evidence in accordance with section 88 of the Act. Email is not an approved method of service under the Act. I am not satisfied the Landlord sufficiently served his evidence and it is not admissible in this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Tenants stated that the tenancy started sometime around August 15, 2019, and ended when they moved out on July 30, 2020. Monthly rent was set at \$2,100.00 per month. At the end of the tenancy, the Landlord held a \$1,050.00 security deposit, and a \$525.00 pet deposit, totalling \$1,575.00. The Tenants stated that they returned the keys on July 31, 2020, and discussed some of the issues with the rental unit. However, no agreement was reached between the parties. The Tenants stated that no condition inspection report was ever completed.

The Tenants stated that the Landlord returned \$250.00 on August 12, 2020, and retained the rest of the deposits. The Landlord confirmed this is correct and felt entitled to keep that amount due to the damage. However, the Landlord also confirmed that he did not file an application for dispute resolution to claim against the deposit.

The Landlord confirmed he received the Tenants' forwarding address in writing, but could not recall when. The Tenant provided tracking information to show she sent her forwarding address in writing on August 20, 2020, by registered mail.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the

return of double the amount of all deposits held by the Landlord. The doubling provisions apply to both security and pet deposits.

In this case, and pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received the Tenants' forwarding address in writing on August 25, 2020, five days after it was mailed. I note the Tenants moved out on July 30, 2020. However, they did not return the keys until July 31, 2020, which, I find, is the date the tenancy ended.

Therefore, the Landlord had until September 9, 2020, to either repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither, and at the end of the tenancy he only returned \$250.00 out of the \$1,575.00 he held. Accordingly, I find the Tenants are entitled to recover double the amount of the security and pet deposit held by the Landlord at the end of the tenancy ( $2 \times \$1,575.00 = \$3,150.00$ ) less the amount returned around August 12, 2020 (\$250.00) pursuant to section 38(6) of the Act.

Pursuant to section 72 of the Act, and given the Tenants' were successful in their application, I award them recovery of the filing fee they paid for this application. Accordingly, pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$3,000.00, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act, and \$100.00 in recovery of the filing fee.

### Conclusion

I grant the Tenants a monetary order in the amount of \$3,000.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and 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 09, 2021

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Residential Tenancy Branch