



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of double the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on January 29, 2021, the tenants sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on February 3, 2021, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on December 12, 2016 and the tenants on December 7, 2016, indicating a monthly rent of \$1,500.00 and a security deposit of \$750.00, for a tenancy commencing on January 1, 2017
- A copy of a text message from the tenants to the landlord providing the forwarding address and requesting the return of the deposit
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by text message at 2:24 pm on November 24, 2020
- A copy of a letter and envelope showing the landlord sent the tenants a letter to their forwarding address on December 20, 2020
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposits paid by the tenants, an authorized deduction of \$250.00 and indicating the tenancy ended on November 30, 2020

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$750.00 as per the tenancy agreement.

I accept the following declarations made by the tenants on the Tenant's Direct Request Worksheet:

- The tenants have not provided consent for the landlord to keep more than \$250.00 from the deposit
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on November 30, 2020.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenants sent their forwarding address to the landlord by text message, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that the landlord received the tenants' forwarding address as they wrote the tenants a letter on December 20, 2020 and sent it to the tenants' forwarding address.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on December 20, 2020.

I accept the evidence before me that the landlord has failed to return the deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposit by January 4, 2021, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenants double the amount of the security deposit in accordance sections 38(6) of the *Act*.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Therefore, as of the date of this application, January 28, 2021, I find that the tenants are entitled to a monetary award calculated as follows:

Item	Amount
Deposit less authorized deduction (\$750.00 - \$250.00)	\$500.00
Doubling of unreturned Security Deposit	\$500.00
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award to Tenants</b>	<b>\$1,100.00</b>

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1,100.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 24, 2021

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Residential Tenancy Branch