



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned ex-parte application regarding the above-noted tenancy. The tenants applied for an order for the landlord to return the security deposit, pursuant to section 38.

Landlords SZ and VZ (the landlord) and tenants GD and TD attended the hearing. The tenants were assisted by advocate LD (the tenant). Tenant GD authorized advocate LD to represent him and left the hearing at 1:33 P.M. 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 parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issue to be Decided

Are the tenants entitled to an order for the landlords to return the security deposit?

### 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 tenant's claims and my findings are set out below. I explained Rule of Procedure 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on September 11, 2011 and ended on February 04, 2019. Monthly rent was \$1,200.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 and a pet damage deposit of \$300.00 were collected. The landlord returned the \$300.00 pet damage deposit on February 09, 2019 and currently holds the \$600.00 security deposit.

The tenant stated she provided the tenants' forwarding address in writing to the landlords on February 09, 2019 and the tenants did not authorize the landlord to retain the security deposit. This application was filed on November 05, 2020.

The landlord does not recall if the tenants provided the forwarding address in writing. The landlord affirmed the tenants damaged the rental unit and they were aware the landlord would not return the security deposit because of the damages. The landlord did not submit an application claiming against the security deposit.

### Analysis

I accept the undisputed testimonies that the tenancy ended on February 04, 2019, the tenants gave the landlord written notice of their forwarding address on February 09, 2019 and did not authorize in writing the landlords to withhold the security deposit. The landlord has not brought an application for dispute resolution claiming against the security deposit. I further accept the testimony the landlord did not return the \$600.00 security deposit.

Per section 38(4)(a) of the Act, the tenant may authorize the landlord in writing to retain the deposit.

Section 38(1) of the Act requires the landlord to either return the tenant's 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. Pursuant to section 38(6) 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.**

**(emphasis added)**

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the security deposit and pet damage deposit when the landlord has not complied with the 15 day deadline; it states:

B. 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.**

[...]

**C. 3. 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;

**(emphasis added)**

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$1,200.00 (double the \$600.00 security deposit).

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

Conclusion

Pursuant to section 38(6)(b) of the Act, I grant the tenants a monetary order in the amount of \$1,200.00

This order must be served on the landlords by the tenants. If the landlords fail 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: March 25, 2021

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Residential Tenancy Branch