



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD-DR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, O.Z. attended the hearing via conference call and provided undisputed affirmed testimony. The tenant, T.H. did not attend. The tenant, O.Z. stated that T.H. was in the process of calling in but that it was not necessary to wait for him to begin. The landlord did not attend or submit any documentary evidence. The tenant, T.H. subsequently did not attend and was unrepresented.

The tenant, O.Z. (the tenants) was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 7, 2021. The tenants referred to the submitted copy of the Canada Post Customer Receipt Tracking label as confirmation of service. I accept the undisputed affirmed evidence of the tenants and find that the landlord despite not attending is deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$3,850.00 which consists of:

\$1,275.00	Return of Original Security Deposit
\$1,275.00	Return of Original Pet Damage Deposit
\$1,275.00	Compensation, Security Deposit, Sec. 38(6) Fail to Comply
\$1,275.00	Compensation, Pet Deposit, Sec. 38(6) Fail to Comply
\$5,100.00	
-\$925.00	Partial Payment Return by Landlord
-\$225.00	Partial Payment Return by Landlord
-\$200.00	Deduction agreed to by tenant
\$3,750.00	
\$100.00	Filing Fee
\$3,850.00	

The tenants provided undisputed affirmed testimony that a \$1,275.00 security deposit and a \$1,275.00 pet damage deposit were paid at the start of the tenancy. The tenant stated that the tenancy ended on July 31, 2020 and the landlord was provided their forwarding address in writing via Canada Post Registered Mail on August 18, 2020.

The tenants stated the landlord had originally filed an application in dispute of returning the security deposit but had withdrawn it. The tenants stated that the landlord had subsequently made two partial payments of \$925.00 and \$225.00. The tenants also stated that they had agreed to the landlord withhold \$200.00. The tenants stated that as of the date of this hearing the landlord has failed to return the balance of the two deposits. The tenants confirmed that the landlord has since not filed any other application to dispute return of the deposits nor has the landlord been given permission to keep the combined deposits except for the \$200.00 noted above.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed evidence of the tenants and find that the landlord was served with the tenants forwarding address in writing via Canada Post Registered Mail on August 10, 2020. I also accept the undisputed affirmed evidence of the tenants that the landlord despite filing an application to dispute returning the combined deposits, withdrew that application. On this basis, I find that the tenants have been successful in their application for the filed amount of \$3,850.00 based upon the below table.

The tenants are entitled to recovery of the \$100.00 filing fee.

\$125.00	Return of Original Security Deposit (\$925.00 and \$225.00 deducted partial payments by landlord)
\$1,275.00	Return of Original Pet Damage Deposit
\$1,275.00	Compensation, Security Deposit, Sec. 38(6) Fail to Comply
\$1,275.0	Compensation, Pet Deposit, Sec. 38(6) Fail to Comply
\$3,950.00	
-\$200.00	Deduction agreed to by tenant
\$3,750.00	
\$100.00	Filing Fee
\$3,850.00	

Conclusion

The tenants are granted a monetary order for \$3,850.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: May 07, 2021

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Residential Tenancy Branch