



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR

### 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 doubled amount of the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 28, 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 May 3, 2021, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the doubled security deposit pursuant to sections 38 and 67 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 and the tenants on June 12, 2018, indicating a monthly rent of \$2,595.00 and a security deposit of \$1,297.50, for a tenancy commencing on July 2, 2018
- A copy of a Condition Inspection Report which was signed by the landlord and the tenants on December 29, 2020, indicating the tenants provided a forwarding address at the time of the move-out inspection

- A copy of a witnessed 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 provided to the landlord on the Condition Inspection Report at 9:30 am on December 29, 2020
- A copy of several e-mails and text messages exchanged between the landlord and the tenants discussing the return of the deposit
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants and indicating the tenancy ended on December 29, 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 \$1,297.50 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 all or part of the deposit
- There are no outstanding Monetary Orders against the tenants for this tenancy
- 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 December 29, 2020.

In accordance with section 88 of the *Act*, I find that the landlord was duly served with the forwarding address on December 29, 2020.

The tenant submitted a copy of e-mails exchanged between the landlord and the tenants in which the landlord states the deposit was transferred as a credit to the Tenant N.A.'s new tenancy on January 4, 2021, within the fifteen days required.

Section 38(8)(c) of the *Act* allows for a deposit to be returned to the tenant by using any form of electronic payment **to the tenant** or transfer of funds **to the tenant**.

I find that transferring to a credit to a new tenancy is not considered transferring to the tenants themselves, as required by the *Act*. Furthermore, I find that there is no evidence submitted to indicate the tenants agreed have the deposit transferred to the new tenancy instead of being paid out.

I find that the landlord reversed the transfer to the new tenancy and issued a cheque to the tenants on January 18, 2021.

For this reason, I find the landlord has failed to return the deposit to the tenant by January 13, 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 the doubled amount of the security deposit in accordance section 38(6) of the *Act*.

Therefore, as of the date of this application, April 15, 2021, I find that the tenants are entitled to a monetary award in the amount of \$1,297.50, the amount claimed by the tenants for the doubled provision of the security deposit.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1,297.50 for the doubled amount of the security deposit. 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: May 12, 2021

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Residential Tenancy Branch