



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MNSDB-DR, FFT

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the tenant, dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:49 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that they had named two parties as landlords in their application. The tenant submitted a copy of the tenancy agreement which named MS as the landlord, which is a shortened version of the landlord AS's name. The tenant testified that they had provided AS's full name for this application. The tenant testified that although AS was the named landlord in this dispute, the tenant also included DS as a landlord in this application as the tenant had paid rent to DS, who was the registered owner of the home, and sister of AS. I accept the tenant's undisputed testimony that there were two landlords that the tenant dealt with, and both landlords' names will remain on all documents for this dispute.

The tenant provided sworn, undisputed testimony that the landlords were served with the tenant's application for dispute resolution and evidence package on March 4, 2021 by way of "letter mail". The tenant provided the tracking information in their evidence package, which included tracking numbers and a notation that signatures are required. Residential Tenancy Policy Guideline #12 notes that "Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available". I find that the tenant's packages meet this criteria. Accordingly, I find the landlords deemed served with the tenant's application and evidence for this hearing in accordance with sections 88, 89, and 90 of the Act on March 9, 2021, 5 days after mailing.

### **Issues(s) to be Decided**

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to the monetary order requested?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

The tenant testified that this month-to-month tenancy had began on May 5, 2009, and ended on February 28, 2019. Monthly rent was set at \$1,300.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$600.00, and a pet damage deposit in the amount of \$300.00, which the landlord still holds.

The tenant testified that despite several attempts to serve the landlords with their forwarding address and obtain the return of their deposits, the landlords have not responded. The tenant testified that they had sent the landlords their forwarding address on May 12, 2019. After failing to receive a response, the tenant sent the landlord a tracked letter on February 20, 2020. The tenant provided the tracking number for this package which was sent to AS. The tenant also attached a letter to the wall at the rental house on February 20, 2020. The tenant testified that they had never given permission for the landlords to retain any portion of their deposits, nor have the landlords filed an application to retain the deposits.

### **Analysis**

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section

38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

I am satisfied that the tenant had provided undisputed evidence that the landlords had collected from the tenant a security deposit in the amount of \$600.00, and a pet damage deposit in the amount of \$300.00. I am satisfied that the tenant had provided their forwarding address to the landlords in writing. I find it undisputed that either of the landlords had failed to return any portion of the security deposit and pet damage deposit within 15 days of the provision of the forwarding address. There is no record that the landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit or pet damage deposit. The tenant gave sworn testimony that the landlord had not obtained written authorization at the end of the tenancy to retain any portion of tenant's deposits.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a return of both deposits plus a monetary order in an amount equivalent to the original security deposit and pet damage deposit.

I allow the tenant to recover the filing fee for this application.

### **Conclusion**

I allow the tenant's monetary application for the landlords' failure to comply with sections 38 of the *Act*. I issue a monetary order in the amount of \$1,155.00 in the tenant's favour as set out in the table below.

<b>Item</b>	<b>Amount</b>
Return of Security and Pet Damage Deposit	\$900.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	900.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,900.00</b>

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: August 9, 2021

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Residential Tenancy Branch