



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing 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 as compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or

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

### Preliminary Issue – Named Respondents

The landlord submits that her ex-husband has nothing to do with this matter and that his name should be removed as a respondent. The tenants submit that they had dealings with the landlord present in this hearing but were given official documentation from her ex-husband to end the tenancy and feel both names should be listed. It is clear from the documentation before me that each landlord had a role in this tenancy and therefore, I deny the request. Both named respondents will remain.

### Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary order as compensation for the landlords' failure to comply with the Act, regulation or tenancy agreement?

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

### Background, Evidence

The tenant's testimony is as follows. DZ testified that the tenancy began on November 1, 2018 and ended on September 5, 2021. The tenants were obligated to pay \$2100.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1050.00 security deposit and a \$1050.00 pet deposit. DZ testified that a written condition inspection report was conducted at move in and move out. DZ testified that they provided their forwarding address at the move out inspection but have not received the return of either deposit. The tenants are seeking the return of double their deposits  $\$1050.00 + \$1050.00 \times 2 = \$4200.00$ .

DZ testified that the landlords served them on July 21, 2021 with a Two Month Notice to End Tenancy for Landlords Use of Property as the property had been sold and the new owners wished to move in. DZ testified that they were to vacate by September 30, 2021. DZ testified that they found a home earlier than the effective date and on August 20, 2021, served the landlord notice that they would be vacating by September 5, 2021. DZ

testified that she sent that notice by registered mail and by email. The tenant is seeking one month's free rent as per the notice but at a pro-rated amount of \$1750.00 to account for the five days of September that they occupied the unit. The tenant is also seeking the recovery of the \$100.00 filing fee. The tenants seek a monetary order of \$6050.00.

The landlord gave the following testimony. The landlord testified that she does agree that the tenants are entitled to the \$1750.00 as compensation for ending the tenancy as required per section 49 of the Act. The landlord testified that she was ill and going through a divorce and realized that she missed the fifteen-day deadline to return their deposits. The landlord testified that she was advised not to pay it by several different agencies. The landlord advised that she will be seeking her own monetary claim for damages and cleaning against the tenants.

### Analysis

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

### Compensation for ending the tenancy

The landlord agrees that the tenants are entitled to this amount, accordingly; I grant the tenants \$1750.00.

### Double the deposits

The tenants said they are applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

The landlord acknowledged that they did not file an application to retain the deposit as noted above or obtain the tenants written permission to retain it. Based on the testimony of the tenants and the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenants are entitled to the return of double their deposits in the amount of \$4200.00.

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

### Conclusion

The tenants have established a claim for \$6050.00. I grant the tenants an order under section 67 for the balance due of \$6050.00. This order may be filed in the Small Claims 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 02, 2022

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Residential Tenancy Branch