



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Foreshore Equipment & Supply and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants and an agent for the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the landlord received the tenants' application for dispute resolution and evidence on October 14, 2021; however, neither party were certain on the method of service. I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* because receipt was confirmed.

Both parties agree that the landlord's evidence was not served on the tenants.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the landlord's evidence was not served on the tenants in accordance with section 3.15 of the *Rules*, the landlord's evidence is excluded from consideration.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and ended on September 1, 2021. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. A security deposit of \$775.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants provided their forwarding address in a letter attached to an email on July 24, 2021. The July 24, 2021 letter containing the tenants forwarding address was entered into evidence.

Both parties agree that the landlord returned the tenants' security deposit in the amount of \$775.00 on October 12, 2021. The tenants testified that they are seeking double the return of their security deposit because their security deposit was returned late.

The landlord did not apply for authorization to retain any portion of the security deposit.

The tenants testified that they did not provide the landlord with written authorization to retain any portion of their security deposit. This testimony was not disputed by the agent.

### Analysis

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

Residential Tenancy Policy Guideline #17 states:

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

I find that the landlord was sufficiently served for the purposes of this *Act* pursuant to section 71 of the *Act*, with the tenants' forwarding address on July 24, 2021, because the agent confirmed receipt on that date. Pursuant to section 38 of the *Act*, the landlord was required to either return the security deposit in full or apply for authorization to retain the security deposit by September 16, 2021.

The landlord did not file for authorization to retain the deposit and did not return the security deposit until October 12, 2021. Therefore, pursuant to section 38 of the *Act*, the tenants are entitled to double their security deposit less the amount of the deposit already returned.

$\$775.00$  (security deposit) \* 2 =  $\$1,550.00$  (doubled security deposit) -  $\$775.00$  (deposit returned) =  **$\$775.00$**

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, in accordance with section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$875.00.

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 25, 2022

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Residential Tenancy Branch