



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-DR, FFT

### Introduction

On March 21, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On April 21, 2022, this Application was set down to be heard on December 15, 2022, at 1:30 PM.

The Tenant attended the hearing, with J.S. attending as the co-tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail; however, she was not sure when this was done. The Landlord confirmed that he received this package by registered mail in late April 2022. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been duly served the Notice of Hearing and

evidence package. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

The Landlord confirmed that he did not submit any documentary evidence for consideration.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around January 28, 2022. Rent was established at an amount of \$3,900.00 per month and was due on the first day of each month. A security deposit of \$1,950.00 and a pet damage deposit of \$1,950.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that she provided their forwarding address to the Landlord on January 22, 2022, by email, and she directed me to recent email exchanges with the Landlord using that specific email address.

The Landlord confirmed that he received the email, likely sometime in January 2022. He testified that he did not respond to this email, nor did he reply to it stating to the Tenant

that he does not accept this as a valid forwarding address in writing. He acknowledged that he did not return the deposits because it was his belief that the Tenant broke the fixed-term tenancy early and did not end the tenancy in accordance with the *Act*. He also confirmed that he did not have any written authorization to retain the deposits, and that he did not file an Application to claim against the deposits. He was advised that he could make a separate Application against the Tenant if he believed he was owed compensation for any monetary loss due to a breach of the *Act*.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord and Tenant exchanged emails with enough frequency to accept that as a means that they communicated. As this was a manner with which the Landlord appears to have responded, I find that the Landlord was deemed to have received the Tenant's email containing the forwarding address three days after it was emailed, pursuant to the deeming provisions of the *Residential Tenancy Regulation*.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposits in full **or** make an Application to claim against the deposits. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without the Tenant's written consent. However, it appears as if the Landlord did so, and given that he acknowledged that he simply kept those deposit because it was his belief the Tenant breached the *Act*, I am satisfied that the Landlord

was not aware of his obligations with respect to dealing with the deposits at the end of the tenancy.

As I am satisfied that the Landlord had received the Tenant's forwarding address, he had 15 days from the end of tenancy, to either return the deposits in full, or make an Application through the Residential Tenancy Branch to keep the deposits. However, the consistent and undisputed evidence is that the Landlord took no action at all.

Based on the totality of the evidence before me, as the Tenant did not provide written authorization for the Landlord to keep any amount of the deposits, and as the Landlords did not return the deposits in full or make an Application to keep them, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld them contrary to the *Act*. Therefore, I am satisfied that the doubling provisions of this Section do apply in this instance.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the amount of the deposits. Under these provisions, I grant the Tenant a monetary award in the amount of **\$7,800.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Doubling of the security deposit	\$3,900.00
Doubling of the pet damage deposit	\$3,900.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$7,900.00</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$7,900.00** 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: December 15, 2022

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Residential Tenancy Branch