



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNSDB-DR, FFT**

### **Introduction**

This hearing dealt with an application by the landlord/tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- return of the security and/ or pet deposit pursuant to section 38 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord KN and tenant AS appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified that he did not receive the tenants’ dispute notice and materials. The tenants testified they served the landlord by registered mail on Nov 28, 2022 to an address that the landlord confirmed in the hearing was his address. The tenants produced the registered mail receipt and tracking number for the package. Based on the evidence of the parties I find the landlord deemed served on December 3, 2022 in accordance with sections 88, 89, and 90 of the Act.

The landlord acknowledged that he did not serve his evidence on the tenants. Pursuant to RTB Rules of Procedure 3.17 I decline to consider the landlord’s evidence on the basis that the tenants have not seen it and my acceptance of the evidence would unreasonably prejudice the tenants.

This matter was adjourned from a direct request hearing because that direct request process requires the tenancy agreement to be signed and dated by the parties. In this case it was not signed and dated. However whether the tenancy agreement is signed and dated by the parties is not a requirement of the participatory hearing process.

### Issue(s) to be Decided

1. Is the tenant entitled to an order for return of the security deposit?
2. Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenants signed a tenancy agreement for the rental unit commencing April 1, 2018, although there was a previous tenancy agreement between the landlord and some of the tenants listed on the April 1, 2018 tenancy agreement. Other tenants listed on the April 1, 2018 tenancy agreement were new tenants. Rent at the end of the tenancy was \$4,444.00 per month due on the first of the month.

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The landlord testified that on the June 30, 2022 date that the tenants vacated the rental unit and the landlord met with tenant ML to perform the move out condition inspection. The parties agree that AS was not present for the move out inspection. The tenant AS testified that she was unable to attend the move out condition inspection and authorized ML to meet with the landlord. The landlord testified that no move out condition inspection report was completed.

The landlord testified that tenant ML agreed to the landlord retaining the entire security deposit. He provided no documentation in support of his contention.

I have no evidence before me showing that the landlord filed a dispute resolution to seek an order allowing him to retain the damage deposit.

### Analysis

Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Section 38 of the Act requires the landlord to return the security and pet deposits or file an application for dispute resolution within 15 days of receiving the tenants' forwarding address. If the landlord fails to either return the deposits, or file an application, the Act stipulates that the landlord must return double the amount of the security and pet deposits to the tenants.

I find the landlord failed to return the deposits or apply for dispute resolution within 15 days of receiving the tenants' forwarding address.

Therefor the tenants' application for return of the security deposit and pet deposit is granted and the tenants are entitled to receive double the pet and security deposit. As the tenants were successful in their application they are entitled to recover the filing fee.

Claim	Amount
Security Deposit (double)	\$4,000.00
Pet Deposit (double)	\$600.00
Filing Fee	\$100.00
<b>Total</b>	<b>\$4,700.00</b>

### Conclusion

The tenants are granted a monetary order for \$4,700.00 in recovery of the security and pet deposits and the filing fee. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 17, 2023

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Residential Tenancy Branch