



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

On October 6, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with N.S. attending as an advocate for her. Both Landlords 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 she served a separate Notice of Hearing and evidence package to each Landlord by registered mail on October 21, 2022, and the Landlords confirmed that they received these packages. Based on this undisputed testimony, I am satisfied that the Landlords have been duly served these packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlords advised that they served their evidence to the Tenant by registered mail on or around June 10, 2023, by registered mail. The Tenant confirmed that she received

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

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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.

#### Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit and pet damage deposit?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant 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 April 1, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 30, 2022. Rent was established at an amount of \$1,950.00 per month and was due on the first day of each month. A security deposit of \$975.00 and a pet damage deposit of \$975.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Tenant confirmed that she provided her forwarding address in writing on June 30, 2022, on the move-out inspection report, and the Landlords confirmed that they received this. The Landlords advised that they returned \$1,450.00 of the Tenant's deposits within 15 days of June 30, 2022, but they withheld \$500.00 of the deposits without the Tenant's written authorization. They also confirmed that they did not make an application to keep these deposits within 15 days of June 30, 2022.

The Tenant acknowledged that she received a cheque for \$1,450.00 within 15 days of June 30, 2022, and that she cashed this cheque. As a result, the Tenant stated that she was only seeking compensation in the amount of **\$1,000.00**, despite asking for this amount twice on her Application.

### 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 Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive 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 Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenant provided a forwarding address in writing to the Landlords on June 30, 2022. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlords 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 Landlords to retain a portion of the deposits without the Tenant's written consent.

As the consistent and undisputed evidence before me is that the Landlords did not return the security deposit and pet damage deposit in full or make an Application to keep a portion of the deposits within 15 days of June 30, 2022, I am satisfied that the Landlords illegally withheld a portion of the deposits, contrary to the *Act*. As they did not comply with the requirements of Section 38, I find that the doubling provisions of this Section apply in this instance.

As per Policy Guideline # 17, given that the Tenant paid a security deposit of \$975.00 and a pet damage deposit of \$975.00, and as the Landlords held back \$500.00 from one of the deposits without the Tenant's written authorization, the monetary award

granted shall be calculated as follows:  $\$975.00 \times 2 = \$1,950.00 - \$1,450.00 = \$1,000.00$ . Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,000.00**. Furthermore, pursuant to the Deposit Interest Calculator on the Residential Tenancy Branch website, there is no interest owed on this amount for this time period.

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

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

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

Doubling of deposit not returned	\$1,000.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,100.00</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,100.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: July 5, 2023

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Residential Tenancy Branch