



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

- authorization to obtain a return of double her pet damage and security deposits (the deposits) pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlords did not attend this hearing, although I waited until 11:12 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that on May 29, 2012, she sent the landlords a written notice to end her tenancy by June 30, 2012, by registered mail and by email. The tenant testified that she sent a copy of her dispute resolution hearing package to the landlords by registered mail on July 27, 2012. She provided a copy of the envelope containing that package which noted the Canada Post Tracking Number. This envelope also revealed that the package was being returned to the tenant. I am satisfied that the tenant served the above documents to the landlords in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her deposits? Is the tenant entitled to a monetary award equivalent to the amount of her deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

This tenancy began as a six-month fixed term tenancy on September 1, 2010. At the end of the initial term, this converted to a periodic tenancy which ended by June 30, 2012. Monthly rent by the end of this tenancy was set at \$1,500.00. The tenant testified that the landlords continue to retain the tenant's pet damage deposit of \$750.00 and security deposit of \$750.00, both paid on September 1, 2010.

The tenant testified that she provided the landlords' agent, one of the landlord's fathers-in-law, her written forwarding address when she attended the joint move-out condition inspection. She entered into written evidence copies of emails exchanged with the male landlord following the end of her tenancy.

The tenant applied for a monetary award of \$3,000.00 plus the recovery of her \$50.00 filing fee. She maintained that the landlords have not complied with the provisions of section 38 of the *Act* requiring the landlords to return her deposits within 15 days of the end of her tenancy or her providing them with her forwarding address in writing. As such, she applied for a return of double her deposits in accordance with section 38 of the *Act*.

### Analysis

Section 38(1) of the *Act* requires a 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 deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that there is undisputed evidence that the landlords did not return the tenants' deposits in full within 15 days of being provided with the tenant's forwarding address. The landlords did not apply for dispute resolution within 15 days of receiving the forwarding address. There is no evidence that the landlords obtained the tenant's written authorization to retain any portion of the tenant's deposits. For these reasons, I find that the tenant is therefore entitled to a monetary order amounting to double the deposits with interest calculated on the original amount only. No interest is payable over this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to obtain a return of her deposits, to obtain a monetary award equivalent to the amount of her deposits for the landlords' failure to comply with s. 38 of the *Act*, and to recover her filing fee:

<b>Item</b>	<b>Amount</b>
Return of Pet Damage & Security Deposits (\$750.00 + \$750.00= \$1,500.00)	\$1,500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,500.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$3,050.00</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 12, 2012

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Residential Tenancy Branch