



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, MNSD, OLC

### Introduction

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

- authorization to obtain a return of double their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

The tenants testified and supplied documentary evidence that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 20, 2016. The tenants provided documentary evidence to show that the package was refused by the landlord and returned to the tenants. I find that the tenants have acted in accordance with sections 89 of the Act and I find that regardless of the landlords' refusal, the landlord is deemed served five days later on September 25, 2016 in accordance with Section 90 of the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenants' undisputed testimony is as follows. The tenancy began on June 1, 2014 and ended on December 1, 2015. The tenants were obligated to pay \$1100.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit and a \$300.00 pet deposit. The tenants testified that the landlord was deemed served their forwarding address on August 22, 2016 as a result of separate hearing conducted at the Branch. The tenants are seeking the return of double their deposits  $\$850.00 \times 2 = \$1700.00$ . The tenant is also seeking the recovery of the \$100.00 filing fee.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

Based on the undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double their deposits in the amount of \$1700.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$1800.00. I grant the tenants an order under section 67 for the balance due of \$1800.00. This order may be filed in the Small Claims 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: March 22, 2017

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Residential Tenancy Branch