



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

On October 6, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant J.K. appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that he served the Landlord with the Notice of Hearing using Canada Post Registered Mail on October 6, 2016. The Tenant provided the Registered Mail receipt number as proof of service. The Tenant testified that he checked the status of the delivery and the mail was delivered. I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlord.

The hearing process was explained and the Tenant was asked if he had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenant testified that the tenancy commenced on April 15, 2016, and ended on September 11, 2016. Rent in the amount of \$900.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Tenant testified that the Landlord did not return the security deposit after the Tenants moved out of the rental unit.

The Tenant testified that he hand delivered a letter containing his forwarding to the Landlord on August 14, 2016. The Tenant provided a copy of the letter.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit. The Tenant testified that there have not been any dispute resolution hearings where the Landlord applied to retain the security deposit.

The Tenant testified that the Landlord sent him a cheque in the amount of \$219.04 on October 6, 2016.

### Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

The Landlord received the Tenants' forwarding address on August 14, 2016, and failed to repay the security deposit or make an application to claim against it within 15 days of receiving the Tenants forwarding address.

I find that there was no written agreement from the Tenants that the Landlord could retain the security deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

The amount of the security deposit is doubled to be \$900.00. The Landlord returned \$219.04 to the Tenants on October 6, 2016. Therefore, the Landlord owes the Tenants the balance of \$680.96.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants' paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$780.96. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

#### Conclusion

The Landlord failed to return the security deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and the cost of the filing fee. I grant the Tenants a monetary order in the amount of \$780.96.

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: April 05, 2017

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Residential Tenancy Branch