



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 21, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by E.K. The Landlord attended the hearing on his own behalf. Both E.K. and the Landlord provided affirmed testimony.

On behalf of the Tenants, E.K. testified the Application package and documentary evidence upon which he intended to rely was served on the Landlord by registered mail. The Landlord confirmed receipt. In addition, the Landlord testified that the documentary evidence upon which he intended to rely was served on the Tenants by regular mail. E.K. acknowledged receipt on behalf of the Tenants. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to provide evidence orally and in written and documentary form, and to 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

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on July 1, 2017. The tenancy ended on August 1, 2018. During the tenancy, rent in the amount of \$2,100.00 per month was due on the 1<sup>st</sup> day of each month. The tenancy agreement confirms the Tenants paid a security deposit in the amount of \$1,050.00, which the Landlord holds.

On behalf of the Tenants, E.K. testified they provided the Landlord with a forwarding address in writing via text message and email on August 7, 2018. The text message was sent to the Landlord's son; the email was sent to the Landlord. Copies of the correspondence were submitted into evidence and the Landlord acknowledged receipt of the forwarding address on August 7, 2018. On behalf of the Tenants, E.K. confirmed the security deposit has not yet been returned to the Tenants.

The Landlord acknowledged the security deposit has not been returned to the Tenants, but stated it was never his intention to withhold it. He testified that correspondence with the Tenants led him to believe the Tenants could not receive mailed at their forwarding address. As a result, a cheque was sent to his son to deliver in person. However, the Landlord's son forgot to do so. When the Tenants subsequently raised the issue with the Landlord on or about September 4, 2018, the Landlord immediately sent a payment to the Tenants in the amount of \$1,092.00, which included interest the Landlord believed to be due. However, the Tenants did not accept the payment as they believed they were entitled to receive double the amount of the security deposit.

The Landlord advised that he tries to be a diligent in his responsibilities, and noted that E.K. and S.V. were good tenants. He submitted there was never any intention to withhold the security deposit but suggested the late payment was merely an honest mistake.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. Section 38(6) states that when a landlord fails to comply with section 38(1) of the *Act*, the tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I find the Tenants provide the Landlord with their forwarding address in writing on August 7, 2018. While I accept the Landlord acted diligently and took steps to return the security deposit to the Tenants, he did not do so. Rather, the parties agreed the security deposit was not returned to the Tenants by August 22, 2018, as required under section 38(1) of the *Act*. Indeed, the Landlord did not send any payment to the Tenants until sending the cheque dated September 4, 2018. Ultimately, all that was required to satisfy the Landlord's obligation under the *Act* was to mail the security deposit to the forwarding address provided by the Tenants.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants have demonstrated an entitlement to a monetary award for double the amount of the security deposit, or \$2,100.00 (\$1,050.00 x 2). No interest is payable. However, having been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$2,200.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

### Conclusion

The Tenants are granted a monetary order in the amount of \$2,200.00. The 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: January 18, 2019

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Residential Tenancy Branch