



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNSD

### Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenants. The landlord did not submit any documentation for this hearing. 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 deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

### Background, Evidence

CB gave testimony on behalf of the tenants as follows: The tenancy began on March 1, 2016 and ended on April 30, 2019. The tenants were obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$475.00 security deposit. The tenant testified that a written condition inspection report was conducted at move in on February 28, 2016 and a move out report on April 29, 2019.

The tenant testified that at the move out condition inspection the landlord advised him that he might retain some of the deposit for some deficiencies in the unit. The tenant testified that he provided his forwarding address on that day in person in writing to the landlord. The tenant testified that they received the deposit on May 30, 2019; 30 days after the tenancy had ended and 15 days outside of the legislated timeline. The tenant requests that the landlord pay double the deposit plus the \$100.00 filing fee minus the \$475.00 already paid for a total monetary award of \$575.00.

The landlord gave the following testimony. The landlord testified that he mailed out a cheque on May 6, 2019 and doesn't believe it would take 24 days for it to be received. The landlord testified that he acted in good faith and had no intention of not returning the deposit within the timeline.

### 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 tenants said they are 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.**

The landlord confirmed that he did not file an application to retain the deposit and that he did not receive written authorization from the tenant to retain any of the deposit. Based on the testimony of the tenant, the documentary evidence before me and in the absence of any disputing documentary evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenants are entitled to the return of double their deposits in the amount of \$950.00 minus the \$475.00 previously paid.

The tenants are also entitled to the recovery of the \$100.00 filing fee. The tenants are entitled to a total award of \$575.00.

### Conclusion

The tenants have established a claim for \$575.00. I grant the tenants an order under section 67 for the balance due of \$575.00. 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: September 03, 2019

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Residential Tenancy Branch