



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, RRP, FFT

### Introduction

On October 4, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a return of their personal property pursuant to Section 65 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On October 7, 2021, this Application was set down for a Dispute Resolution participatory hearing to be heard on February 15, 2022 at 9:30 AM.

Tenant R.K. attended the hearing, with H.Y. attending as an advocate for the Tenants; however, the Landlord did not attend at any point during the 25-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged this term, and they provided a solemn affirmation.

H.Y. advised that the Notice of Hearing package was served to the Landlord at the dispute address on October 9, 2021 by registered mail (the registered mail tracking number is noted on the first page of this Decision). Included was a screenshot of the Canada Post tracking history which indicated that this was received on October 13, 2021. He stated that this was served to the dispute address as the Landlord advised the Tenants not to use the Landlord’s address for service on the tenancy agreement because the Landlord would be moving back into the rental unit. This is corroborated by the Canada Post tracking history, submitted as documentary evidence, when the Tenants served their forwarding address to the Landlord’s original address on February 17, 2021. The tracking history indicated that the item was directed to the “recipient’s

new address”, and that this item was delivered on February 19, 2021 (the registered mail tracking number is also noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Landlord was sufficiently served the Tenants’ Notice of Hearing package on October 13, 2021.

He also advised that he served the Tenants’ evidence package to the Landlord on January 26, 2022 by registered mail (the registered mail tracking number is also noted on the first page of this Decision). This tracking history indicated that this package was delivered on January 28, 2022. Based on this undisputed evidence, as this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to a return of their personal property?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

H.Y. advised that the tenancy started on December 15, 2019 and that the tenancy ended on or around July 18, 2020 when the Tenants gave up vacant possession of the rental unit. Rent was established at an amount of \$3,600.00 per month and was due on the 20<sup>th</sup> day of each month. A security deposit in the amount of \$1,800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He advised that the Tenants provided their forwarding address to the Landlord by registered mail on February 17, 2021, as noted above, using the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form. He stated that the Landlord has neither returned the security deposit nor made an Application to claim against it. Therefore, the Tenants are seeking double the deposit in the amount of **\$3,600.00** pursuant to Section 38 of the *Act*. He referred to the documentary evidence submitted to support this position.

In addition, he advised that prior to giving up vacant possession of the rental unit, the Tenants and the Landlord agreed that they could store some of their belongings with the Landlord for a period of time, at a cost of \$200.00. However, after paying this amount, the Landlord will now not return their property. As such, he stated that the Tenants are seeking an Order for the return of their personal property, which consists of their luggage. He referenced the documentary evidence submitted to support this claim.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full 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 pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the undisputed evidence before me, I am satisfied that the Tenants provided their forwarding address in writing to the Landlord on February 17, 2021 and that, according to the tracking history, the Landlord received this package on February 19, 2021.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the

Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenants' written consent.

As the Landlord had received the Tenants' forwarding address in writing on February 19, 2021, she had 15 days from that date to either return the security deposit in full or make an Application through the Residential Tenancy Branch to keep the security deposit. However, it appears as if the Landlord took no action.

Based on the totality of the evidence before me, as the Tenants did not provide written authorization for the Landlord to keep any amount of the security deposit, and as the Landlord did not return the security deposit in full or make an Application to keep this amount within 15 days of February 19, 2021, I find that the Landlord did not comply with the requirements of Section 38 and she illegally withheld the security deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, and based solely on the Tenants' request, I am satisfied that the Tenants have substantiated a monetary award amounting to double the amount of the security deposit that was paid. Under these provisions, I grant the Tenants a monetary award in the amount of **\$3,600.00**.

With respect to the Tenants' claims for a return of their personal property, I am satisfied that the Landlord has not returned the Tenants' personal property, and is holding it unlawfully. I **Order** the Landlord to return the Tenants' personal property, in its entirety, within a reasonable period of time. Should the Landlord fail to comply with this Order, the Tenants are at liberty to apply for a further Monetary Order for compensation, or for aggravated damages.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenants**

Doubling of the security deposit	\$3,600.00
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Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$3,700.00</b>

### Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$3,700.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

In addition, the Landlord is **Ordered** to return the Tenants' personal property, in its entirety, within a reasonable period of time.

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: February 15, 2022

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Residential Tenancy Branch