



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 3:15 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on May 4, 2012. He provided a copy of the Canada Post Tracking Number to confirm this mailing. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This one-year fixed term tenancy agreement commenced on April 3, 2012. Monthly rent by the end of this tenancy was set at \$1,850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$925.00 security deposit paid on March 31, 2011.

The tenant testified that he moved from the rental unit in late February 2012. He said that he returned the keys to the landlord and yielded vacant possession of the rental unit to the landlord on March 27, 2012. He testified that he paid March 2012 rent during the last month of his tenancy.

The tenant testified that he participated in a joint move-out condition inspection with the landlord's representative on March 27, 2012. He entered into written evidence a copy of the landlord's representative's joint move-out condition inspection report of March 27, 2012. In that report, the landlord's representative noted that the landlord's representative had inspected the rental unit and "found it to be in good condition with only normal wear and tear."

The tenant gave oral and written evidence that he provided the landlord with his forwarding address by way of an April 24, 2012 email. He entered a copy of his email and the landlord's response into written evidence for this hearing.

The tenant applied for a monetary award of \$1,900.00. This included a requested return of double his security deposit because the tenant maintained that the landlord had not returned his security deposit within 15 days of receiving the tenant's forwarding address. The tenant also applied for the recovery of his filing fee.

#### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the evidence is that the tenant provided his forwarding address to the landlord by email on April 24, 2012. This method of delivery of the tenant's forwarding address does not comply with the provision set out in section 38(1)(b) of the *Act* with respect to "the date the landlord receives the tenant's forwarding address in writing". Since I find that the tenant has not provided his forwarding address in writing to the landlord, the landlord's obligations to return the tenant's security deposit had not been engaged by the time the tenant applied for dispute resolution seeking a return of double his security deposit.

I find that the tenant is entitled to obtain a return of his security deposit plus applicable interest from the landlord. No interest is payable over this period.

I dismiss the tenant's application to obtain a further monetary award equivalent to the value of his security deposit pursuant to section 38(6) of the *Act* without leave to reapply. I do so as I find that the tenant has not met the test required by section 38(1)(b) of the *Act* that would entitle him to any such Order.

Having been successful in this application, I find that the tenant is entitled recover the \$50.00 filing fee paid for this application.

#### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to recover his security deposit and filing fee from the landlord:

Item	Amount
Return of Tenant's Security Deposit	\$925.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$975.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application for a monetary award equivalent to the value of his security deposit pursuant to section 38(6) of the *Act* without leave to reapply as I find that the landlord has not contravened the provisions of section 38 of the *Act*.

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: June 15, 2012

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Residential Tenancy Branch