



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD OLC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order for substituted service of the documents by email as this is the only forwarding address provided by the landlord;
- b) An Order to return double the security deposit pursuant to Section 38;
- c) An Order for compensation for work he did to show the home to potential purchasers and to compensate him for the time on the legal work on the application ; and
- d) To recover the filing fee for this application.

### **Preliminary Issue of Substituted Service:**

The tenant was granted an Order for substituted service on April 19, 2013 as the landlord had moved to another country and he had no forwarding address for her. All their communications were by bank transfer and email. I find the evidence he provided is credible; I find the landlord responded and had received the application/notice of hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and to other compensation for his efforts to show the house and to prepare for the hearing? Is he entitled to recover the filing fee?

### **Background and Evidence**

The landlord did not attend the hearing. I find she is deemed to be served by email as outlined in the issue of substituted service. The tenant attended the hearing and was

given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$900 in February and agreed to rent the unit for \$1800 a month from February 15, 2012. The tenant vacated the unit on March 31, 2013 and provided a new address to the landlord on April 1, 2013 when he requested the return of his security deposit. All financial transactions were done by wire transfer to his bank and the landlord had this information.

The landlord disputed with him by email concerning the cost of cleaning and did return \$397.01 by wire transfer on April 23, 2013. In her emails, she states she has 30 days to deal with the deposit but the tenant advised her it was only 15 days. The remainder of the tenant's deposit has never been returned and he gave no permission to retain any of it.

The tenant also requested compensation for his work in showing the house for sale and for his time in preparing for this hearing.

The landlord has not filed an Application to claim against the deposit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The *Residential Tenancy Act* provides for the return of the security deposit and pet damage deposit. In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later 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 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 the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that he paid \$900 security deposit in 2012, provided his forwarding address in writing to the landlord who already had the wire transfer information on April 1, 2013. I find the many emails between the landlord and him supports his evidence. I find he gave no permission for the landlord to retain any of the deposit and has only received \$397.01 on April 23, 2013 which is outside the 15 day limitation in section 38 for its return. I find the tenant entitled to recover double his security deposit.

I find no authority in the Act to allow the tenant compensation for showing the home to potential purchasers and he had no contract with the landlord for this. I find that section

72 provides authority to award the filing fee for arbitration but time and legal fees are not compensated so I dismiss these claims of the tenant.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below. Only a \$25 filing fee was paid and this is awarded. I dismiss the other claims of the tenant in their entirety.

**Calculation of Monetary Award**

Original security deposit	900.00
Double deposit (no interest 2012-13)	900.00
Filing fee	25.00
Less amount refunded out of time	-397.01
Monetary Order to Tenant	1427.99

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: May 24, 2013

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Residential Tenancy Branch

