



# 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 her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this 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 and to cross-examine one another. The landlord testified that on February 12, 2013, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on February 9 or 10, 2013. I am satisfied that the tenant served the hearing package to the landlord in accordance with the *Act*.

### Preliminary Issues- Contents of the Tenant's Evidence Package and the Tenant's Attempt to Amend her Application for Dispute Resolution

Although the Residential Tenancy Branch (the RTB) and the landlord received an extensive written evidence package from the tenant on April 24, 2013 and April 26, 2013 respectively, the contents of that package and the Notice of a Dispute Hearing provided by the tenant to the landlord were questioned by the landlord. The RTB and the landlord received the first page of what the tenant claimed was a four page "amendment" of the tenant's original application for dispute resolution. The tenant's original application was for a monetary award of \$1,520.00.

The tenant's written evidence package received by the RTB on April 24, 2013 included additional monetary issues not identified in the tenant's original application for dispute resolution, as well as a monetary order worksheet in which the tenant sought an increased monetary award totalling \$4,497.06. The landlord also said that the copy of the Notice of Hearing that the tenant provided to him was roughly one half of the standard notice, with everything after the date, time of hearing, and instructions on how

to call in to access the hearing eliminated or “whited out”. He said that he was unaware of how he could submit evidence and there was no other information in the Notice of Hearing document provided to him by the tenant to assist him to understand the process she had initiated. The landlord also commented that he had not yet had a full opportunity to review everything in the tenant’s written evidence package due to the late timing of her service of this written evidence to him.

At the hearing, I confirmed that the Notice of Hearing document included as the second page of the tenant’s written evidence package was also missing one half of the information on the bottom of the Notice document provided to her by the RTB on February , 2013. I also noted that the process for amending an application for dispute resolution requires submitting a new and revised full application for dispute resolution to the RTB and including the revised items that the applicant wishes to make to the second page of that application. Once the RTB confirms that an application has been amended, the applicant is then required to provide a complete copy of the amended application to the respondent. In this case, the tenant seems to have been under the mistaken impression that she could amend her application by simply writing “amended” on the first page of her original application and submitting this along with her evidence to the RTB and the landlord.

I advised the tenant at the hearing that I am not satisfied that she followed a proper process to notify either the RTB or the landlord that she was making an official amendment to her original application. The tenant added many items to her original application and failed to give the landlord an adequate opportunity to respond to these new issues introduced months after her original application for dispute resolution and a few days before the scheduled hearing. Of the items listed in her \$4,497.06 Monetary Order Worksheet in her April 2013 written evidence package, only the tenant’s request for an \$800.00 penalty for the landlord’s alleged failure to return her security deposit in accordance with the *Act* related to the two issues identified in her original application for dispute resolution.

I advised the parties that the only issue legally before me at this hearing was the tenant’s original request for the return of double her security deposit and the recovery of her filing fee. All other issues identified in her worksheet (e.g., her claim for reimbursement for photographs, mailing costs, moving expenses, two months rebate of rent) are not before me and have not been considered in this decision.

During the hearing, both parties confirmed that the landlord returned \$720.00 from the tenant’s security deposit to her shortly after the landlord received the tenant’s dispute resolution hearing package. The tenant said that she received and cashed the

landlord's \$720.00 cheque in mid-February 2013, likely by February 20, 2013. The parties agreed that they had an agreement, confirmed in the joint move-out inspection report of January 12, 2013, in which the landlord was allowed to retain \$80.00 from that deposit for the payment of parking during this tenancy.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to the amount of her 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 tenancy began as a one year fixed term tenancy on September 1, 2011. When the initial term expired the tenancy converted to a periodic tenancy. Monthly rent by the time the tenant ended her tenancy on January 17, 2013 was set at \$1,595.00, payable in advance on the first of each month, plus utilities. The tenant paid an \$800.00 security deposit on August 30, 2011. The parties agreed that the landlord has returned \$720.00 from the tenant's security deposit by mid-February 2013, after the landlord received the tenant's dispute resolution hearing package in which she had applied for double her security deposit. The tenant has negotiated the landlord's \$720.00 cheque for the return of the security deposit.

The tenant's application for a monetary award of \$1,520.00 was for a return of double her security deposit plus the recovery of her filing fee for this application.

The tenant entered into written evidence a copy of a December 12, 2012 email in which she advised the landlord that she intended to end her tenancy. She also provided a copy of a Mutual Agreement to End Tenancy signed by her and a co-tenant whose name also appears as a co-tenant on the first page of the two pages of the six-page Residential Tenancy Agreement she entered into written evidence. Although the signatures of the tenant and co-tenant are not dated and there is no signature from the landlord signifying his agreement to this mutual end to tenancy, the tenants did note on this document that they intended to vacate the premises by 12:00 a.m. on January 15, 2013. Since there is no signature on the Mutual Agreement to End Tenancy by the landlord, I am not of the opinion that the Agreement entered into written evidence by the tenant has any legal effect.

#### 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 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 and as noted above, there was an agreement pursuant to section 38(4)(a) of the *Act* to allow the landlord to keep \$80.00 from the tenant's security deposit. Since the remainder of the tenant's security deposit has been returned to the tenant and cashed by the tenant, the issue before me is whether the landlord is responsible for failing to return the \$720.00 security within 15 days of either the end of this tenancy or having received written notice of the tenant's forwarding address.

The parties agreed that the tenant(s) had vacated the premises by January 17, 2013. The landlord testified that at the joint move-out condition inspection of January 12, 2013, he identified two outstanding issues. The first of these was the \$80.00 in parking fees that the tenant agreed he could keep from the security deposit. The landlord also said that he advised the tenant that she would have to return a missing key and fob.

The tenant said that she provided her forwarding address to the landlord by email on January 17, 2013. She said that she also enclosed a copy of her forwarding address in the envelope that she sent the landlord containing the missing keys and fob. The landlord testified that he did not receive a written forwarding address with the keys, but did agree that he received the tenant's January 17, 2013 email containing her forwarding address. The landlord testified that he sent a cheque for \$720.00 to the tenant to return the remaining portion of her security deposit to her on January 26, 2013. The tenant testified that she did not receive any cheque from the landlord for the return of her security deposit, requiring her to apply for dispute resolution to seek a return of double her deposit. The landlord testified that he cancelled the \$720.00 cheque he had sent the tenant on February 12, 2013, the same day that he received the tenant's dispute resolution hearing package. Since he realized that the tenant had not received his original cheque, he testified that he issued a new cheque the following day on February 13, 2013, and mailed it to her.

I have considered the tenant's application for the imposition of an \$800.00 penalty against the landlord for failing to comply with the provision in section 38 of the *Act* requiring the landlord to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. I first note that although the landlord admitted to having received the tenant's email containing her forwarding address, there is conflicting evidence as to whether the tenant actually gave the landlord written evidence of her forwarding address when she returned the keys to the rental unit. Since the landlord testified that he had the tenant's forwarding address, I must decide whether the landlord's actions were consistent with an attempt to avoid returning the tenant's \$720.00 security deposit or whether on a balance of probabilities the landlord attempted to send this cheque to her, but for whatever reason, the cheque did not reach the tenant.

On a balance of probabilities, I find that the landlord's actions following his receipt of news that the tenant had not received his cheque indicate that he did attempt to return the tenant's security deposit within the time frame required by the *Act*. Rather than waiting for this hearing, the landlord took immediate action to cancel the cheque that he said he sent to the tenant and reissued and sent a new cheque to the address listed on her application for dispute resolution. Under these circumstances, I find it more likely than not that for whatever reason the landlord's initial cheque did not find its way to the tenant after he mailed it to her. For this reason, I find that the landlord is not responsible for failing to comply with the provisions of section 38 of the *Act*. I dismiss the tenant's application for the issuance of a monetary award pursuant to section 38 of the *Act* without leave to reapply. As the tenant has been unsuccessful in her application, I do not allow her to recover her filing fee from the landlord.

### Conclusion

I dismiss the tenant's application for a monetary award for the landlord's failure to return her security deposit to her within the time frame required by the *Act* without leave to reapply. I also dismiss the tenant's application to recover her filing fee without leave to reapply. 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 07, 2013

