



# 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 her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:44 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she sent the landlord a copy of her dispute resolution hearing package, which included the Notice of Hearing, to the last known address the tenant had for the landlord by registered mail on March 25, 2013. She provided the Canada Post Tracking Number, Customer Receipt and a copy of the returned envelope from Canada Post to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed to have been served with the tenant's dispute resolution hearing package on March 30, 2013, the fifth day after its mailing.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? 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 her application from the landlord?

### Background and Evidence

This tenancy began as a one-year fixed term tenancy on October 1, 2009. At the expiration of the first term, the tenancy converted to a periodic tenancy. Monthly rent by the end of the tenancy was set at \$995.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$465.00 security deposit paid on September 10, 2009.

The tenant entered into written evidence a copy of her November 5, 2012 letter to the landlord advising him of her intent to vacate the rental unit by December 16, 2012. She testified that she vacated the rental unit in accordance with that notice.

The tenant applied for a monetary award of \$467.50, the amount of her security deposit. The tenant entered into written evidence a copy of an undated letter she said that she sent to the landlord by registered mail before she commenced her application for dispute resolution. In that letter, she requested the return of her security deposit in full to her current forwarding address, included in her letter. The tenant testified that her registered letter was not returned to her. She also entered into written evidence a copy of a December 19, 2012 email from the landlord in which the landlord asserted that he was authorized to retain the tenant's security deposit as a result of the tenant's failure to pay a full month's rent for December 2012, due to her late notice to end her tenancy.

### 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 security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain that 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 I am also required to issue a monetary award in the tenant's favour 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, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. Although the landlord apparently asserted that there remains unpaid rent from this tenancy, there is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord has not obtained her written authorization at the end of the tenancy to retain any portion of the tenant's security deposit. In fact, she provided written evidence that she expressly denied giving her written authorization to retain her security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double her security deposit with interest calculated on the original amount only. No interest is payable over this period. As the tenant has been successful in her application, I allow the tenant to recover her \$50.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$465.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	465.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$980.00</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.

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 19, 2013

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Residential Tenancy Branch

