



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 her 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. He testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on July 3, 2013. He provided the Canada Post Tracking Number and Customer Receipt to confirm this mailing. He said that Canada Post returned his registered letter to him as unclaimed. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the tenant's hearing package on July 8, 2013, the fifth day after its mailing.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return 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 tenancy commenced as a one-year fixed term tenancy on December 1, 2004. At the expiration of that term, this tenancy continued as a periodic tenancy. Monthly rent at the time that the tenant vacated the rental unit on May 31, 2013 was set at \$934.00,

payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on December 1, 2004.

The tenant testified that he notified the landlord on April 30, 2013, that he would be ending his tenancy on May 31, 2013. After vacating the premises, the tenant testified that he sent the landlord a registered letter on June 7, 2013, in which he requested that the landlord return his security deposit plus interest to him to the tenant's new address. The tenant testified that the landlord has not returned any portion of his security deposit.

The tenant applied for a monetary award of \$724.78 plus the recovery of his \$50.00 filing fee from the landlord.

### 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, I find that the landlord was deemed served with the tenant's forwarding address in writing on June 12, 2013, the fifth day after its registered mailing. There is no evidence that the landlord applied for authorization to retain the security deposit nor is there any evidence that the tenant agreed to let the landlord keep any portion of that deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. As the tenant has been successful in this application, I also allow the tenant to recover his \$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 his original security deposit plus interest, a monetary award for the landlord's failure to comply with section 38 of the *Act*, and recovery of the filing fee:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit plus Interest (\$350.00 + \$12.39= \$362.39)	\$362.39
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	350.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$762.39</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order 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: October 04, 2013

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Residential Tenancy Branch

