



# 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 11: 14 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.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 on September 16, 2013, he sent the landlord a copy of his dispute resolution hearing package by registered mail to the most recent mailing address he had for the landlord and as identified on his tenancy agreement. He provided a copy of the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the tenant served his hearing package and his written evidence 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

As per the terms of this one- year fixed term tenancy which began on July 1, 2012, this tenancy ended when the tenant vacated the rental unit on June 30, 2013. Monthly rent was set at \$2,600.00, payable in advance on the first of each month. The tenant paid a \$1,300.00 security deposit on June 15, 2012. He testified that the landlord returned \$650.00 of his security deposit to him in early July 2013, on approximately July 3 or 4,

2013. He testified that the landlord has refused to return the remaining \$650.00 from his security deposit.

The tenant testified that he sent his forwarding address in writing to the landlord by registered mail on August 8, 2013.

The tenant's application for a monetary award of \$1,950.00 was for double his original \$1,300.00 security deposit less the \$650.00 already returned to him by the landlord. The tenant also requested the recovery of his 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 has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing, although she has returned \$650.00 of that deposit. 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. The tenant also provided both written evidence and sworn testimony that he has not waived his right to obtain a return of double his security deposit from the landlord.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period. From this award is deducted the \$650.00 already returned to the tenant by the landlord. As the tenant has been successful in his application, I find that the tenant is also entitled to recover his filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of double his security deposit, less the amount already returned to him, plus the recovery of his filing fee

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$1,300.00 x 2 = \$2,600.00)	\$2,600.00
Less Returned Portion of Security Deposit	-650.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,000.00</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 24, 2013

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Residential Tenancy Branch

