



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double his security deposit pursuant to section 38.

The landlord did not attend this hearing, although I waited until 11:13 a.m. in order to enable him 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. He testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on August 13, 2013. He submitted written evidence in the form of a Canada Post Tracking Number and Customer Receipt to confirm this registered mailing and Canada Post Online Tracking information to confirm that the hearing package was successfully delivered to the landlord on August 16, 2013. I am satisfied that the tenant served his hearing package 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 double his security deposit for the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

This periodic tenancy for a room in a basement commenced on March 1, 2013. Monthly rent was set at \$600.00, payable in advance by the first of each month. The tenant testified that the landlord continues to hold his \$300.00 security deposit paid on February 20, 2013.

The tenant testified that on May 20, 2013, he provided the landlord with his notice to end this tenancy by June 30, 2013. He said that he vacated the rental unit on June 30, 2013, at which time he returned his keys to the rental unit.

The tenant entered sworn oral testimony and written evidence that he attempted a number of times to obtain a return of his security deposit from the landlord. On each occasion, the landlord advised him that he was not following the correct procedure to obtain a return of that deposit. Eventually, and after studying the provisions of the *Act* carefully, the tenant gave his forwarding address in writing to the landlord on July 18, 2013. He gave sworn testimony that he placed a note with his forwarding address on it into the mail slot at the landlord's residence on July 18, 2013. He testified that this was the location for service of documents that the landlord had included in his Residential Tenancy Agreement.

### 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, there is undisputed evidence that the tenant placed his forwarding address in writing in the landlord's mail slot on July 18, 2013. The tenant entered into written evidence a copy of the document he left in the landlord's mail slot on July 18, 2013. In accordance with the provisions of sections 88(f) and 90(d) of the *Act*, I find that the landlord was deemed served with the tenant's forwarding address in writing on July 21, 2013, three days after it was placed in his mail slot.

Based on the undisputed evidence before me, 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. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$600.00, which allows the tenant to recover double his security deposit due to the landlord's failure to abide by

the provisions of section 38 of the *Act*. 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: November 13, 2013

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Residential Tenancy Branch

