



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coldwell Banker City Centre Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF, O

### 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;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

The landlord did not attend this hearing, although I waited until 9:45 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 sworn testimony, and to make submissions. The tenant gave sworn testimony supported by copies of written evidence that she sent the landlord a copy of her dispute resolution hearing package by registered mail on October 12, 2013. The tenant provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. The tenant also testified that Canada Post's Online Tracking System revealed that the landlord signed for delivery of her hearing package on October 16, 2013. 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 October 17, 2013, five days after its registered mailing by the tenant.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion 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 this application from the landlord?

### Background and Evidence

This one-year fixed term tenancy commenced on February 15, 2012. Monthly rent was set at \$1,950.00, payable in advance on the first of each month. The tenant paid a \$975.00 security deposit on February 20, 2012.

On November 29, 2012, the tenant gave the landlord her notice to end this tenancy by December 31, 2012. The tenant said that she paid her December 2012 rent and vacated the rental unit on December 31, 2012, before the scheduled February 28, 2013 end to her fixed term tenancy. She testified that she gave her forwarding address to the landlord on December 31, 2012, at the time of the joint move-out inspection of the rental unit. She entered into written evidence a copy of the joint move-in and move-out condition inspection reports, in which her forwarding address was clearly noted.

The tenant entered written evidence and sworn testimony that the landlord returned only \$28.60 from her security deposit to her on January 16 or 17, 2013. She provided written evidence that the landlord withheld \$495.00 + 12% for tax (i.e., a total of \$554.40) for liquidated damages as per section 34 of the Residential Tenancy Agreement (the Agreement) between the parties. She also provided written evidence that the landlord withheld the remaining \$442.40 for damage that the landlord maintained arose during the course of this tenancy.

The tenant asserted that the wording of section 34 of the Agreement did not qualify as a genuine pre-estimate of the costs associated with ending her tenancy before the scheduled end date to her Agreement. She provided undisputed written evidence that section 34 of the Agreement was a penalty clause and would not qualify as liquidated damages under the *Act* and as set out in Residential Tenancy Branch Policy Guideline 4 with respect to Liquidated Damages.

The tenant also maintained that she never gave written consent to the landlord to deduct specific amounts from her security deposit on the joint move-out condition inspection report or in any other document. She said that she had never waived her right to claim double the security deposit if the landlord did not comply with the security deposit provisions of the *Act*.

The tenant applied for a monetary award of \$1,137.40, based on her calculations of the amounts that she maintained she was entitled to receive on the basis of the landlord's alleged failure to abide by the provisions of section 38 of the *Act*.

### 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 in full 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, the tenant provided undisputed evidence that she provided her forwarding address in writing to the landlord on December 31, 2012, the same date that her tenancy ended. There is no evidence that the landlord applied for dispute resolution to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony, supported by email evidence, that the landlord did not comply with the requirement of section 38 of the *Act* to return the tenant's security deposit in full within 15 days of the end of the tenancy and the provision of the forwarding address to the tenant. There is no evidence that the landlord obtained the tenant's written authorization at the end of this tenancy to retain any portion of the tenant's security deposit.

I find that the landlord has not returned the 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 security deposit with interest calculated on the original amount only, less the \$28.60 returned to the tenant on January 16 or January 17, 2013. No interest is payable over this period.

Having been successful in this application, I find further that the tenant is entitled recover her \$50.00 filing fee paid for this application.

### Conclusion

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

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$975.00 x 2 = \$1,950.00)	\$1,950.00
Less Returned Portion of Security Deposit	-28.60
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,971.40</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: January 09, 2014

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Residential Tenancy Branch

