



# 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 landlords pursuant to section 72.

The landlords did not attend this hearing, although I waited until 9:45 a.m. in order to enable them 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, to make submissions and to call witnesses. The tenant testified that he sent the landlords a copy of his dispute resolution hearing package by registered mail on October 6, 2013. He provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89(1) and 90 of the *Act*, I am satisfied that the landlords were deemed served with the tenant's dispute resolution hearing package on October 11, 2013, the fifth day after their registered mailing.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value 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 landlords?

### Background and Evidence

The tenant gave undisputed sworn testimony that he signed a Residential Tenancy Agreement with the landlords on January 16, 2013, for a periodic tenancy that began that day. Monthly rent was set at \$750.00, payable in advance on the first of each

month. The tenant testified that he paid a \$400.00 security deposit on January 12, 2013.

The tenant testified that the parties conducted a joint move-out condition inspection on or about July 29, 2013, two days before his tenancy was to end. He testified that he sent the landlords a written request to return his security deposit in full by way of a letter of August 21, 2013. He entered into written evidence a copy of that letter, which contained his forwarding address. He testified that he sent that letter to the landlords on August 21, 2013, by regular mail. Based on sections 88 and 90 of the *Act*, I find that the landlords were deemed served with the tenant's forwarding address in writing on August 26, 2013, the fifth day after its mailing.

The tenant applied for a monetary award of \$800.00, plus the recovery of his \$50.00 filing fee for his application. The tenant testified that the landlords have not returned any portion of his security deposit and that he has not given the landlords his written authorization to retain any portion of that deposit. He requested a monetary award equivalent to double the value of his security deposit because the landlords have not complied with the provisions of section 38 of the *Act* requiring them to return his security deposit in full within 15 days of receiving his forwarding address.

#### 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 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. In this case, the landlord had 15 days after August 26, 2013 to take one of the actions outlined above. 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." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the

required 15 days. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of his security deposit with interest calculated on the original amount only. No interest is payable.

Having been successful in this application, I find further that the tenant is entitled to recover the \$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 his security deposit 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> (\$400.00 x 2 = \$800.00)	\$800.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$850.00</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 27, 2014

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Residential Tenancy Branch

