



# 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 less the portion of that deposit already returned to him, pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to discuss the tenant's application. The landlord confirmed that she received the tenant's October 29, 2013 written notice to end this tenancy by November 30, 2013. The landlord also confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 7, 2014. I am satisfied that the tenant served both of these documents to the landlord in accordance with the *Act*.

At the hearing, the tenant withdrew his application to recover his filing fee because he had been granted a fee waiver for this filing fee and had not incurred this cost. The tenant's application to recover his filing fee is hereby withdrawn.

### Preliminary Issue- Landlord's Request for an Adjournment

At the beginning of this hearing, the landlord said that she had spoken with a representative of the Residential Tenancy Branch (the RTB) earlier that morning to enquire about obtaining an adjournment of this hearing for health reasons. At the hearing, she requested an adjournment because she said she was still taking heavy painkillers to cope with two recent major surgeries. She testified that the first of these surgeries occurred in December 2013. When complications arose from the first surgery, she had to have a second major surgery on March 8, 2014. Although she had hoped to be able to participate in this hearing, she said she was still heavily medicated.

The tenant objected to the landlord's requested adjournment. He said that he was missing work to enable him to participate in this hearing and testified that he wanted to proceed to have his application considered at this hearing.

Analysis – Landlord's Request for an Adjournment

Rule 6 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. Since the landlord had not submitted a written request for an adjournment before this hearing, Rule 6.3 applies:

***6.3 Adjournment after the dispute resolution proceeding commences***

*At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure. In accordance with sections 89 and 90 of the *Act*, the landlord was deemed served with notification of this hearing on January 12, 2014, the fifth day after the tenant sent the landlord a copy of his dispute resolution hearing package. This gave the landlord over three months to make arrangements to ensure that either she or an agent assigned by her could represent her interests at this hearing. While the landlord may have anticipated that she would be able to participate in this hearing following her initial surgery, she also had over a month after her second surgery to assess the situation and determine if she would be able to participate in this teleconference hearing. During that period, neither the landlord nor any authorized agent acting on her behalf submitted any written evidence, any separate application for dispute resolution or any request for an adjournment.

Under these circumstances, it appeared to me that the landlord had ample opportunity prior to the hearing to either submit a written request for an adjournment or to arrange for an agent to represent her at this hearing. The issues before me in the tenant's application are relatively straightforward and the landlord was able to answer all questions asked of her clearly and with little apparent hesitation. To adjourn the tenant's relatively basic application for a return of his security deposit would unfairly prejudice the tenant and impose an additional potential cost of requiring him to take more time off work. For these reasons and after considering the criteria set out in Rule 6.4 of the RTB's Rules of Procedure, I advised the parties of my decision that the landlord had not met the criteria established for granting an adjournment and proceeded with this hearing.

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* less the \$150.00 already returned to him by the landlord?

Background and Evidence

This periodic tenancy began on October 30, 2011. Monthly rent was set at \$700.00, payable in advance on the first of each month. The tenant confirmed the landlord's claim that on December 14, 2014, she returned \$150.00 of the tenant's \$350.00 security deposit paid on October 30, 2011, to the tenant.

The landlord confirmed that she received the tenant's forwarding address in writing on October 29, 2013, as part of the tenant's written notice to end this tenancy. The landlord confirmed that she received the tenant's keys to the rental unit on November 30, 2013, when he vacated the rental unit. The landlord testified that there is no rent that remains owing from this tenancy.

The tenant's application for a monetary award of \$550.00 sought a return of double his \$350.00 security deposit less the \$150.00 returned to him on December 14, 2013. He made this application because he claimed that the landlord had no legal authorization under section 38 of the *Act* to retain any portion of his security deposit.

The tenant entered into written evidence a copy of a security deposit statement email prepared by the landlord in which the landlord made deductions for damage that she claimed arose during the course of this tenancy. This statement identified many features of the rental unit that the landlord claimed were either damaged or needed cleaning at the end of this tenancy.

At the hearing, the landlord testified that she had attempted unsuccessfully to submit an application for dispute resolution to seek a monetary award for damage. She said that she still plans to apply for her own monetary award for damage arising out of this tenancy. She said that the premises were left in a condition whereby she could not have re-rented the premises to another tenant for some time after this tenancy ended.

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. In this case, the landlord had 15 days after November 30, 2013, when this tenancy ended, 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 landlord 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 landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. In fact, he specifically stated in his application for dispute resolution his intention to seek a monetary award of double his security deposit less the \$150.00 returned to him in December 2013.

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 less the \$150.00 returned to him on December 14, 2013. No interest is payable over this period

### 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 by the landlord:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ( $\$350.00 \times 2 = \$700.00$ )	\$700.00
Less Returned Portion of Security Deposit	-150.00
<b>Total Monetary Order</b>	<b>\$550.00</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: April 17, 2014

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Residential Tenancy Branch