



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This is an application by the tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

The tenant attended the hearing by conference call and gave undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant states that the landlord was served with the notice of hearing package by Canada Post Registered Mail on December 10, 2013 and has provided a copy of the online tracking that shows that the package was successfully delivered and signed for by the landlord on December 23, 2013. As such, I am satisfied that the landlord was properly served with the notice of hearing package by Canada Post Registered Mail.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

### Background and Evidence

The tenant states that this was a limited 1 month tenancy during the month of September 2013. The monthly rent was \$2,000.00 and a \$1,000.00 security deposit was paid.

The tenant seeks a monetary claim of the return of double the security deposit of \$1,000.00 as the landlord has failed to return the original \$1,000.00 security deposit within the allowed 15 day time period from when the tenancy ended.

The tenant stated that the landlord was provided his forwarding address via email as per the landlord's request as shown on page 34 of the tenant's printout of text messages. It states, "Your deposit will be returned after inspection is done via email."

The tenant clarified that he understood this to mean that the landlord would return the \$1,000.00 deposit via email interact on September 29, 2013. The tenant states that as of the date of this hearing the landlord has failed to return the security deposit and is not aware of an application for dispute resolution being filed by the landlord to dispute the return of the security deposit.

### Analysis

Section 38 of the Residential Tenancy Act speaks to the return of the security deposit and states,

**38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Although this is not the normally accepted form of providing a forwarding address in writing for the return of the security deposit, the tenant has confirmed in his evidence that the landlord wished to return the deposit via email interact as shown by the submitted copies of the tenant's text messages. The tenant provided his email address as requested and the landlord has failed to return the security deposit. I find based upon the undisputed evidence of the tenant that a claim has been established for \$2,000.00 for the return of double the security deposit as per section 38 (6) of the Act. The tenant is also entitled to the recovery of the \$50.00 filing fee. I grant a monetary order under section 67 for the balance of \$2,050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$2,050.00.

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 01, 2014

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Residential Tenancy Branch

