



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **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 her security deposit pursuant to section 38; and
- authorization to recover her 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 cross-examine one another. The tenant and her agent testified that the tenant handed one of the landlord's representatives a copy of her dispute resolution hearing package on February 17, 2014. The landlord confirmed that the landlord received this hearing package. I am satisfied that the tenant served the landlord with the dispute resolution hearing package in accordance with section 89(1) of the *Act*.

Although the landlord submitted written evidence to the Residential Tenancy Branch, she did not send this material to the tenant because her attempt to courier a cheque to the address identified on the tenant's application for dispute resolution was unsuccessful. There was no need to consider this written evidence as the landlord did not dispute the substantive sworn testimony of the tenant and her agent.

### Issues(s) to be Decided

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

### Background and Evidence

This one-year fixed term tenancy commenced on March 1, 2012. At the expiration of the initial term, the tenant vacated the rental unit on February 28, 2013. Monthly rent was set at \$1,625.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$812.50 security deposit paid on March 1, 2012.

The tenant testified that she handed her forwarding address in writing to the landlord's then building manager on February 28, 2013. When the landlord did not return her security deposit, the tenant handed another copy of her forwarding address to a new building manager in her former rental building in June 2013. The tenant and the agent testified that the tenant handed her forwarding address in writing to that same building manager again in September 2013. The tenant's agent testified that he watched the tenant hand her forwarding address to the building manager on December 13, 2013, and again in early January 2014. The tenant and her agent testified that the tenant has not received a return of her security deposit. The tenant applied for a monetary award equivalent to double the amount of her deposit due to the landlord's alleged failure to return her security deposit within the 15-day time period established under the *Act*.

The landlord testified that the landlord received the tenant's forwarding address in writing on February 28, 2013. After the landlord received the tenant's application for dispute resolution, the landlord attempted to send a cheque to return her security deposit. This package containing the \$812.50 cheque was returned as undelivered by the courier company hired by the landlord to perform this task.

#### 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 February 28, 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 landlord written authorization at the end of this tenancy to retain any portion of her 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. In addition, the tenant and her agent have given undisputed sworn testimony that the tenant has tried many times to obtain a return of this security deposit, and for whatever reason has been unable to obtain a return of her deposit. The tenant's agent gave undisputed sworn oral testimony that the tenant has not waived her right to obtain a payment pursuant to section 38 of the *Act* for the amount owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. 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 her 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 her security deposit plus the recovery of her filing fee

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$812.50 x 2 = \$1,625.00)	\$1,625.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,675.00</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: June 09, 2014

---

Residential Tenancy Branch

