



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, 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 all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1357 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. 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 served the landlord with the dispute resolution package on 31 December 2014 by registered mail. The tenant provided me with a Canada Post tracking number that showed the same. The tenant testified that the landlord did not pick up the mailing and the mailing was returned to the tenant. The tenant testified that he sent the mailing to the address at which the landlord resides. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The tenant testified that he served further evidence to the landlord by registered mail. The tenant provided me with a Canada Post tracking number that set out the same. The tenant testified that the landlord did not pick up this mailing and the mailing was returned to the tenant. On the basis of this evidence, I am satisfied that the landlord was deemed served with the evidence pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposits? Is the tenant entitled to a monetary award equivalent to the amount of his security deposits 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

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in or about October 2011. The tenancy ended on or about 31 August 2014. Initial monthly rent was \$650.00. The tenant testified that in fall of 2011, he remitted a security deposit in the amount of \$650.00 to the landlord.

The tenant testified that, after receiving information from the Residential Tenancy Branch, he sent his forwarding address in writing to the landlord. The tenant testified that he sent his forwarding address by mail to the landlord. The tenant testified that he sent this mailing at some point before 30 September 2014.

The tenant provided me with a copy of an email from the landlord to the tenant on 30 September 2014 at 2118. The tenant testified that this copy is a true copy of the email that he received from the landlord. In that email, the landlord refused to return the security deposit:

*I got your note today.*

*I'd told you there is nothing left of the security deposit , just with a few items YOU OWE ME.*

*I was going to leave it at that, but if you press on I'll itemize, include photos and expect you to pay the additional cos. You decide.*

*Am waiting for a better price to fix the flooring yet.*

The tenant testified that it is his understanding that the "note" to which the landlord refers is his written notice of forwarding address.

The tenant testified that the landlord has not returned any amount from the security deposit. The tenant testified that he never authorized the landlord to deduct any amount from the security deposit. The tenant testified that, to the best of his knowledge, the landlord has not made any application to this Branch to retain the security deposit. The tenant testified that there are no outstanding orders in respect of this tenancy.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within fifteen days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

On the basis of the tenant's sworn and uncontested testimony, I find that the tenant provided his forwarding address to the tenant by 30 September 2014. I find that the landlord's email of 30 September 2014 provides strong evidence that the landlord received the tenant's forwarding address in writing on 30 September 2014. On this basis, the landlord has until 15 October 2014 to return the security deposit or file a claim with this Branch. I find on the basis of the tenant's testimony that the landlord did neither. I find, on the basis of the tenant's sworn and uncontested testimony, that the tenant did not authorize the landlord to keep any or all of the security deposit. On the basis of these findings tenant has proven his entitlement to the return of his security deposit as well as compensation equal to the amount of the tenant's security deposit pursuant to subsection 38(6).

As the tenant has been successful in his application, he is entitled to recover his filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,350.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$650.00
Subsection 38(6) Compensation	650.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,350.00</b>

The tenant is provided with a monetary order 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 subsection 9.1(1) of the Act.

Dated: March 27, 2015

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Residential Tenancy Branch

