



# Dispute Resolution Services

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

The landlord did not attend this hearing, although I waited until 1:48 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that the landlord was served with his Application for Dispute Resolution package on January 7, 2015. He provided the Canada Post tracking number for that mailing. The tenant also testified that he checked the tracking information and confirmed that the landlord had received his package. Pursuant to section 89 and 90 of the *Act*, I find the landlord deemed served with the tenant's Application for Dispute Resolution package as of January 12, 2015, 5 days after its registered mailing. The tenant also testified that he served the landlord with a further evidence package on February 5, 2015. He provided tracking information from Canada Post for this package, as well. Pursuant to the service provisions of the *Act*, I find the landlord deemed served with the further evidence package on February 10, 2015, 5 days after its mailing.

### Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of his security deposit?

Is the tenant entitled to recover his filing fee for this application from the landlord?

## Background and Evidence

The tenant testified that this tenancy began on August 1, 2008 as a fixed term tenancy. He continued to reside in the rental unit on a month to month basis until December 14, 2014, when the tenant vacated the rental unit. The tenant testified that he provided notice to end the tenancy on November 8, 2014. The rental amount had been \$1700.00 payable on the first of each month. The tenant testified he originally paid a \$850.00 security deposit and that the landlord continues to hold \$250.00 from that deposit.

The tenant testified that, on move-in, a condition inspection report was completed by both the tenant and the landlord. The tenant testified that, on vacating the rental unit, 6 years later, a condition inspection report was completed by both the tenant and the landlord. The tenant submitted a copy of the condition inspection report. The condition inspection report noted some small damage. The report was signed and dated by both parties and provided no written indication that any portion of the security deposit would be retained.

The tenant testified that he provided his forwarding address to the landlord on the date he vacated the residence, December 14, 2014. He testified that in January, he received the return of \$600.00 of his security deposit plus \$4.64 in interest via mail. The tenant testified that the landlord sent him an email indicating the landlord retained a portion of the tenant's security deposit, deducting 5 hours' worth of cleaning work, and an amount to repair a closet door and a window. The tenant testified that he thoroughly cleaned the residence when he vacated. He also referred again to the condition inspection report that did not indicate any need for a deduction from his deposit.

The tenant testified that he has not received a return of his full portion of his \$850.00 security deposit and did not give written authorization to allow the landlord to retain any portion of his security deposit.

## 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 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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage 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." The tenant gave undisputed sworn testimony that the landlord has not obtained his written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's vacating the residence and providing his forwarding address in writing on December 14, 2014. The tenant was candid in testifying that he received \$600.00 of his security deposit from the landlord. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant submitted documentary evidence, including condition inspection reports as evidence to show that he did not agree nor was he informed that the landlord would keep a portion of his deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double his security deposit with interest calculated on the original amount only. As the landlord had already paid interest on the original amount of

the security deposit, there is no further interest payable. From this award, I deduct the \$600.00 already returned to the tenant by the landlord.

As the tenant has been successful in his application, I find that the tenant is also entitled to recover his filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover the remainder of his original security deposit plus a monetary award equivalent to the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Return of remainder of Security Deposit	\$250.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	850.00
Filing fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1150.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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 30, 2015

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Residential Tenancy Branch