



# 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:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord, B.M. attended and requested that his wife, M.M. attend as his agent. The tenant made no comments on this request. I accept the landlord's request to have his wife, M.M. attend as his agent for this hearing.

The landlord's agent, M.M. (the landlord) confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. The landlord stated that she submitted two documentary evidence packages to the address provided by the tenant, but noted that they were not received by the tenant. The landlord stated that she contacted the person listed on the tenant's application who provided an email statement that she was not in contact with the tenant and was unaware of the tenant using her name and address for service. The tenant provided no clarification other than confirm that she did not receive the submitted documentary evidence and would not challenge it. Based upon the undisputed testimony of both parties, I find that the landlord was properly served with the notice of hearing package as per section 89 of the Act. I also find based upon the undisputed testimony of both parties that each party has been properly served with the submitted documentary evidence as per section 88 of the Act. The landlord served the tenant at the correct address provided for by the tenant. The tenant did not dispute the claims of the landlord over service or their submissions.

During the hearing the tenant stated that she had a new mailing address and would like to update the file. The tenant's application on file was updated to include this new mailing address.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of double the security deposit and recovery of the filing fee?

### Background and Evidence

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

This tenancy began on May 1, 2015 as confirmed by the undisputed testimony of both parties. Both parties confirmed that the tenant paid a \$750.00 security deposit to the landlord. Both parties confirmed that the tenant did not take possession of the rental unit, but instead gave written notice in a letter dated April 27, 2015 to end the tenancy. The landlord confirmed receipt of this notice on April 28, 2015 as shown by the tenant's submitted copy of a Purolator delivery confirmation dated April 28, 2015. Both parties confirmed that this letter dated April 27, 2015 also provided the landlord with the tenant's forwarding address in writing and her notice to breach the signed tenancy agreement. The tenant stated that the landlord was able to immediately re-rent the unit for May 1, 2015. The landlord confirmed this in her direct testimony.

The tenant seeks a monetary claim of \$1,550.00 which consists of:

Return of Original Security Deposit	\$750.00
Monetary Award for Landlord's Failure to	
Comply with s. 38 of the Act	\$750.00
Recovery of Filing Fee	\$50.00

### 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 15 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.

The landlord confirmed the tenant's claim that a letter dated April 27, 2015 in which the tenant gave her notice of intent to not take possession of the rental unit was received on April 28, 2015. The landlord confirmed that the tenant failed to take possession of the rental unit on May 1, 2015. The landlord confirmed the tenant's claim that the rental unit was re-rented for May 1, 2015. Both parties confirmed that the tenant paid the landlord a \$750.00 security deposit which is still currently held by the landlord. The landlord provided undisputed affirmed testimony that she did not have permission from the tenant nor the Residential Tenancy Branch to retain the security deposit. The landlord confirmed in her direct testimony that an application for dispute resolution was not filed to dispute the return of the security deposit.

I find on a balance of probabilities that the tenant has established a claim for the return of the original \$750.00 security deposit.

I also find that the landlord has failed to comply with section 38 of the Act and is subject to section 38 (6) and is liable to the tenant for an amount equal to the \$750.00 security deposit.

The tenant has established a total monetary claim of \$1,500.00. The tenant having been successful is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to 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:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$750.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	750.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1550.00</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, these orders 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: November 19, 2015

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Residential Tenancy Branch

