



# Dispute Resolution Services

Page: 1

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 the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend the hearing or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence by Federal Express Courier on July 16, 2015. The tenant stated that an online search of the delivery shows that the landlord received and signed for the package on July 17, 2015. The tenant has submitted a copy of the courier service receipt and customer tracking number as confirmation of service. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been properly served with the notice of hearing package and the submitted documentary evidence by courier on July 17, 2015 as per section 88 and 89 of the Act. The landlord is deemed to have been properly served as per section 90 of the Act.

### Preliminary Issue

During the hearing the tenant noted that he had inadvertently indicated on his application that the province for his mailing address was BC instead of Alberta. I accept that this was inadvertent error and that the Residential Tenancy Branch File shall be updated to reflect the change in the listed province.

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

This tenancy began on September 1, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 19, 2014. The monthly rent was \$685.00 and a security deposit of \$225.00 was paid on August 19, 2014.

The tenant seeks a monetary claim of \$450.00 which is the return of double the \$225.00 security deposit. The tenant stated that the tenancy ended on April 30, 2015 and the tenant provided his forwarding address in writing in an email attachment on as part of his notice to vacate the tenancy given on March 3, 2015. The tenant stated that as of the date of filing his application for dispute resolution the landlord has failed to return his \$225.00 security deposit despite numerous request and responses from the landlord to return the security deposit. The tenant stated that he is not aware of any application filed by the landlord to dispute the return of the security deposit nor did the tenant give permission for the landlord to retain it.

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.

I find based upon the undisputed affirmed evidence of the tenant that the landlord has failed to return the original \$225.00 security deposit as required under the Act. The tenant is entitled to the return of the \$225.00 security deposit.

I also find that the landlord has failed to comply with section 38 of the Act by return the \$225.00 security deposit within the allowed 15 day time frame, nor has the landlord filed an application for dispute resolution to dispute its' return. As such, section 38 (6) of the

Act applies and the tenant is entitled to compensation of an amount equal to the \$225.00 security deposit.

As the tenant was successful in this application, I find 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 to recover his original security deposit plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$225.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	225.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$500.00</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: December 01, 2015

---

Residential Tenancy Branch

