



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD

### **Introduction**

Only the tenant attended the hearing. He provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address by completing it on the move-out report. It was verified online that the registered mail was available to the landlord from August 28, 2015 when delivery was attempted and a card was left. After further notices and the landlord failing to claim it by October 1, 2015, the Application was returned to the sender. I find the Application/Notice of Hearing is deemed to be served pursuant to sections 89 and 90 of the Act.

The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover filing fees for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenancy commenced July 1, 2012. The tenant said he had paid security deposits of \$1390 + 55(for remote) + 350 for pet deposit. Rent was \$1390 + \$55 for parking. The tenant said he vacated the unit in August 2015 and provided his forwarding address on the move-out interview/report. He said he was posted to another city.

The tenant's deposits have never been returned and he gave no permission to retain any of them, although the landlord said he would deduct for painting and blinds without

his consent. He said he has received no Application from the landlord to claim against the deposits.

In evidence is the Residential tenancy agreement with addendums.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

.

**Analysis:**

**Section 38(1)** of the Act provides as follows (**emphasis mine**)

**38(1)** Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing in August 2015 and is therefore liable under Section 38(6) which provides:

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the evidence of the tenant credible that the landlord currently holds deposits of \$1390 + \$55 (for remote) + \$350 for a pet. I find he was obligated under Section 38 to return this amount if he determined not to seek its retention through Dispute Resolution.

The amount which is *doubled* is the original amount of the deposits. As a result I find the tenant has established an entitlement claim for \$1795 x2 and is further entitled to recovery of the 50.00 filing fee. I find the tenancy agreement in evidence supports the tenant's claim.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee which he paid for this application.

Double deposits \$1795x2	3590.00
Filing fee	50.00
Total Monetary Order to Tenant	3640.00

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 03, 2015

---

Residential Tenancy Branch

