



# 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:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was accompanied by her advocate.

The parties admitted service of the documents before me.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit 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 parties, 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 1 September 2013. The landlord and tenant entered into a written tenancy agreement. The parties agree that the tenant provided a security deposit in the

amount of \$355.00 to the landlord. The tenancy ended in May 2014 pursuant to the tenant's notice given in April 2014.

On 30 May 2014, the landlord and tenant conducted a condition move out inspection. The tenant provided her forwarding address on the condition move out inspection.

The landlord provided me with a copy of the cheque that was drafted. The cheque is made out to the tenant and dated 15 June 2014. The cheque is in the amount of \$235.00. The landlord testified that the mailing did not return and asks me to infer that because the cheque was not returned the cheque was cashed. The landlord testified that he has spoken to accounting and that this cheque was cashed.

The tenant testified that she did not receive the cheque at all. The tenant testified that she did receive mail from her forwarding address, but it was a friend's address that she provided and she only lived there for one month. The tenant testified that she has not received return of her security deposit.

The tenant testified that the landlord asked to retain amounts for cleaning the carpet at the end of the tenancy. The tenant testified that she originally agreed to pay 75% of the cost on provision of a receipt and then told the landlord that she wanted to check with the Residential Tenancy Branch before agreeing to anything. The landlord testified that the tenant agreed to pay for the entire amount of carpet cleaning. The parties agree that no agreement as to any specific deduction from the security deposit was ever made in writing.

The landlord has not made any application to retain any amount from the tenant's security deposit. There are no prior orders of this Branch 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 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 tenant did not authorize any specific amount to be deducted from her security deposit. The landlord did not apply for dispute resolution. Accordingly, on or before 15 June 2014, the landlord was required to repay the tenant's entire security deposit.

The landlord testified that \$235.00 was returned to the tenant on or about 15 June 2014. The landlord testified that he sent this deposit by mail on or about 15 June 2014. The landlord testified that accounting has told him that the cheque was cashed. The tenant testified that she never received the cheque.

The testimonies of the parties are not necessarily inconsistent. It is possible that the cheque was mailed and cashed, but that the tenant never received it. As there is a harmonious interpretation of the evidence, I find that the landlord did mail the cheque for the partial return of the tenant's security deposit, but that the tenant did not receive it.

Subsection 38(8) of the Act sets out that a landlord must deliver the returned security deposit by way of four possible methods one of which is regular mail to a forwarding address as set out in paragraph 88(d) of the Act. In accordance with paragraph 90(a), a document delivered by regular mail is deemed received on the fifth day after its mailing. This means that the tenant was deemed to have received the cheque on 20 June 2014, the fifth day after its mailing. I find that the tenant has provided insufficient evidence to rebut this deeming provision. As such, I find that the tenant was deemed to have received her security deposit on or about 20 June 2014.

Although the landlord returned a portion of the tenant's security deposit, the landlord unlawfully deducted an amount from the security deposit. There is nothing in evidence that indicates that the tenant agreed to the deduction of a specific amount in writing from the security deposit and there are no orders of this Branch that would permit the landlord to retain any amount from the security deposit. On this basis, I find that the tenant is entitled to the remainder of her security deposit in the amount of \$120.00.

Further, by failing to return the entire security deposit, the landlord has failed to comply with subsection 38(1) of the Act and must pay a monetary award in the amount of the security deposit pursuant to subsection 38(6) of the Act. The tenant is entitled to compensation in the amount of \$355.00 for the landlord's failure to comply with section 38 of the Act.

As the tenant has been successful in this application, she is entitled to recover her filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$525.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Return Balance of Security Deposit	\$120.00
Subsection 38(6) Compensation	355.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$525.00</b>

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with 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 subsection 9.1(1) of the Act.

Dated: December 09, 2015

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Residential Tenancy Branch

