



# 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 his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1114 in order to enable the landlord to connect with this teleconference hearing scheduled for 1100. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord with the dispute resolution package on 29 July 2015 by registered mail. The tenant provided me with a Canada Post tracking number. The tenant testified that when he last checked the tracking information for this mailing it showed that an individual with the same first initial and last name as the landlord had signed for the package on 30 July 2015. On the basis of this evidence, I am satisfied that the landlord were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act on 3 August 2015, the fifth day after its mailing.

### Preliminary Issue Scope of Application

The tenant's application sets out that the tenant seeks a "punitive charge". The tenant's evidence indicates that on 24 June 2015 he told the landlord that he would be exposed to a penalty in the amount of the security deposit if he failed to return the tenant's security deposit.

*Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" sets out that:  
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.

At the hearing I asked the tenant if he was waiving his right to doubling of the deposit. The tenant informed me that he was not.

I find that the landlord had sufficient notice that the issue of the security deposit's doubling would be before me today. On this basis, I find that the tenant has sufficiently pleaded that he seeks compensation pursuant to subsection 38(6) of the Act.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his 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 tenant, 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 March 2011. The parties entered into a written tenancy agreement dated 1 March 2011. Monthly rent of \$1,650.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$825.00, which was collected at the beginning of the tenancy. There was no condition inspection conducted at the beginning of the tenancy.

On 24 April 2015 the tenant provided his notice to end tenancy to the landlord. The tenant's notice set out an effective end date to the tenancy of 31 May 2015. The tenant's notice included the tenant's forwarding address. The tenant testified that this notice was sent by regular mail to the landlord.

On 29 May 2015 the tenant provided his forwarding address by text message.

The tenancy ended 31 May 2015. There was no condition inspection conducted at the end of the tenancy.

On 9 June 2015 the tenant provided his forwarding address by text message and asked for return of \$825.00. The landlord replied by text message saying that the tenant owed \$93.77 in respect of a water invoice. The landlord promised to send a copy of the invoice. The landlord provided a photograph by text message of the water invoice on 29 June 2015.

On 9 July 2015 the tenant provided his forwarding address in writing to the landlord. The tenant testified that this notice was sent by regular mail to the landlord. In this letter the tenant demands return of \$732.20, the amount of the tenant's security deposit less a water invoice in the amount of \$92.80.

The tenant testified that there are no outstanding orders of the Residential Tenancy Branch in respect of this tenancy. The tenant testified that he did not authorize in writing the landlord to withhold any portion of the security deposit as the landlord has not yet provided a copy of the water invoice for the tenant's inspection. The tenant testified that to the best of his knowledge the landlord has not filed an application of his own.

### Analysis

On the basis of the uncontested evidence before me I find:

- The tenancy ended 31 May 2015.
- The tenant first provided his forwarding address in writing 24 April 2015 by regular mail.
- The tenant subsequently provided his forwarding address in writing on:
  - 29 May 2015;
  - 9 June 2015; and
  - 9 July 2015.
- The landlord first provided the water invoice on 29 June 2015.
- On 9 July 2015, the tenant authorized the landlord to retain \$92.80 from the security deposit.
- The landlord has not returned any portion of the tenant's security deposit.
- There are no outstanding orders of the Residential Tenancy Branch.
- The landlord has not made an application for dispute resolution.

Section 38 of the Act sets out relevant rules dealing with security deposits:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
  - (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
  - (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;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
  - (a) 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, ...
- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable...

On the basis of paragraph 90(a) of the Act, the landlord was deemed to have received the tenant's forwarding address in writing on 29 April 2015. On the basis of my findings of fact and paragraphs 38(1)(a) and (b) of the Act, I find that the triggering date for the landlord's obligation to return the deposit was 31 May 2015, the end of the tenancy. Pursuant to paragraphs 38(1)(c) and (d) of the Act, the landlord had until 15 June 2015 to return the tenant's security deposit to the tenant less any deductions agreed to in writing at the end of the tenancy.

For the purposes of the Act, text message is not an acceptable form of delivering documents. The landlord delivered a copy of the water invoice on 29 June 2015. The tenant agreed to the deduction in writing on 9 July 2015. As this authorization to deduct amounts occurred after the date triggered by paragraphs 38(1)(a) and (b). Pursuant to subsection 38(6) of the Act, the landlord was liable to return the tenant the full amount of his security deposit as well as an amount equivalent to his security deposit for his failure to return the tenant's security deposit by 15 June 2015. The tenant has proven his entitlement to \$1,650.00.

The tenant did provide authorization to retain \$92.80 from the amounts owed to him in his letter of 9 July 2015. Accordingly, I offset this amount against the tenant's total award.

As the tenant has been successful in this application he is entitled to recover from the landlord the filing fee paid.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,607.20 under the following terms:

Item	Amount
Return of Security Deposit	\$825.00
Subsection 38(6) Compensation	825.00
Offset Authorized Amount	-92.80
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,607.20</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: January 15, 2016

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Residential Tenancy Branch

