



# 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* ("Act") for:

- authorization to obtain a return of double the amount 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.

The tenant and her legal advocate, TB (collectively "tenant") and the landlord and his agent, ZZ (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses. The tenant confirmed that her advocate had authority to speak on her behalf at this hearing. The landlord had difficulty with language and comprehension during this hearing and confirmed that his agent had authority to assist him at this hearing. This hearing lasted approximately 42 minutes in order to allow both parties, particularly the landlord, to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord testified that he owns the rental unit, which is a house, and that his son only signed the tenancy agreement as an agent because the landlord was out of town at that time. The tenant withdrew her amendment to add the son as a landlord-respondent to this Application, given the above information, and the fact that the son was unable to attend this hearing and was not served with the tenant's Application. I find that this decision and monetary order are properly enforceable against the landlord named in this Application, as he is the owner of the rental unit and his son was merely his agent.

I amend the tenant's application, pursuant to section 64(3)(c) of the *Act*, to increase the tenant's monetary claim from \$1,125.00 to \$1,150.00. The tenant confirmed that she miscalculated the doubling of the security deposit, believing that it was equivalent to one month's rent. The landlord agreed that he collected more than half a month's rent for the security deposit, equalling \$575.00. Therefore, I find that the landlord had notice of the tenant's claims at this hearing, as he testified that he knew the tenant was asking for double the amount of her security deposit back.

### Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double 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*?

Is the tenant entitled to recover the filing fee for her Application from the landlord?

### Background and Evidence

Both parties agreed that this tenancy began on September 1, 2009 and ended on July 1, 2015. Monthly rent in the amount of \$1,125.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$575.00 was paid to the landlord. I note that the landlord has illegally collected more than half a month's rent as a security deposit from the tenant, contrary to section 19(1) of the *Act*. Both parties agreed that the landlord returned \$63.00 from the security deposit to the tenant but the tenant did not cash the landlord's cheque for this amount. A copy of the written tenancy agreement was provided for this hearing.

Both parties agreed that move-in and move-out condition reports were not completed for this tenancy. Both parties agreed that a written forwarding address was provided to the landlord by way of a letter. The tenant stated that she sent the letter by registered mail to the landlord on July 8, 2015 and the landlord confirmed that he received the letter sometime in July 2015 but he could not recall the exact date. The tenant provided a copy of the letter and the Canada Post receipt and tracking number to confirm service of this letter. Both parties agreed that the tenant did not provide written permission to the landlord to keep any amount from her security deposit. The landlord confirmed that he did not file an application for dispute resolution to retain any amount from the security deposit.

The tenant seeks a return of double the amount of her security deposit, totalling \$1,150.00, because the landlord failed to return it in full or make an application for

dispute resolution, within 15 days of the tenant providing a written forwarding address. The landlord disputes the tenant's claim, stating that the tenant caused various damages at the rental unit. The tenant also seeks to recover the \$50.00 filing fee paid for her Application.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, 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 (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed facts presented at this hearing. The tenancy ended on July 1, 2015. The tenant provided a written forwarding address by way of registered mail, permitted by section 88 of the *Act*, on July 8, 2015, as she provided proof of service with a receipt and tracking number. The letter was deemed received by the landlord on July 13, 2015, five days after the mailing, as per section 90 of the *Act*.

The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the full amount of the security deposit to the tenant or make an application for dispute resolution to claim against the security deposit, within 15 days of the receipt of the written forwarding address. The landlord returned a portion of the security deposit but the tenant did not cash the cheque. In any event, the landlord's right to claim against the security deposit for damage was extinguished by sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy. Therefore, I am required to double the value of the tenant's security deposit as per Residential Tenancy Policy Guideline 17.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double the value of her security deposit, totalling \$1,150.00. I order the tenant not to cash the landlord's cheque of \$63.00 and to return this cheque to the landlord if it is still in her possession.

As the tenant was successful in her Application, I find that she is entitled to recover the \$50.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,200.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

I order the tenant not to cash the landlord's cheque of \$63.00 and to return this cheque to the landlord if it is still in her possession.

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: January 18, 2016

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Residential Tenancy Branch

