



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant applied for monetary order for the return of his security deposit and to recover the cost of the filing fee.

The tenant and a support for the tenant attended the teleconference hearing and gave affirmed testimony. The tenant was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant affirmed that he served the landlord with Notice of Hearing, Application and documentary evidence via registered mail on September 3, 2015 and provided a registered mail tracking number in evidence. The tenant stated that the registered mail package was address to the landlord's address. According to the online registered mail tracking information, the registered mail package was successfully delivered and signed for on September 8, 2015. As a result, I find the landlord was served as of September 8, 2015, the day the registered mail package was signed for and delivered.

### Preliminary Matter

At the outset of the hearing, the tenant requested to remove the name of G.A. who was listed as a tenant in the Application. As the tenant confirmed that G.A. did not sign the original tenancy agreement, the name of G.A. was removed as an applicant.

### Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The tenant testified that a fixed term tenancy began on August 10, 2014 and required the tenant to provide vacant possession of the rental unit by July 31, 2015, the end date of the fixed term tenancy. The tenant stated that he vacated the rental unit on July 31, 2015. The tenant affirmed that he paid a security deposit of \$1,790.00 in August of 2014 and that on August 12, 2015, he sent an email to the landlord with his forwarding address and that the landlord replied to his email. Copies of the emails were submitted in evidence and include the subject line "Damage Deposit Return".

The tenant stated that the landlord has not returned the security deposit and that the tenant has not signed over any portion of the security deposit to the landlord. On August 30, 2015, the tenant filed for the return of his security deposit and testified that he is not waiving his right to double the return of his security deposit if he is so entitled under the *Act*.

### Analysis

Based on the above, the tenant's undisputed testimony and evidence, and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the tenant's security deposit, which has accrued no interest to date.

There was also no evidence before me to show that the landlord had applied for dispute resolution within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain any portion of the security deposit. I find the landlord received the tenant's written forwarding address by email as the landlord responded to the email from the tenant on August 12, 2015.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days in accordance with the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue.

As a result, I find the tenant is entitled to double the amount of \$1,790.00 which is **\$3,580.00**. Also, as the tenant's application was successful, I **grant** the tenant the recovery of the cost of the filing fee in the amount of **\$50.00**. Therefore, the tenant's total monetary claim is **\$3,630.00** comprised of \$3,580.00 for double the original security deposit, plus recovery of the \$50.00 filing fee.

### Conclusion

The tenant's application is successful.

The landlord has breached section 38 of the *Act*.

The tenant has successfully proven his monetary claim for \$3,630.00 comprised of \$3,580.00 for double the original security deposit, plus recovery of the \$50.00 filing fee. The tenant is granted a monetary order pursuant to section 67 of the *Act* in the amount of \$3,630.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 1, 2016

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Residential Tenancy Branch

