



# Dispute Resolution Services

Page: 1

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;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on September 14, 2015 and has provided a copy of the Canada Post Customer Receipt Tracking number as confirmation of service. The copy of the tenant's proof of service show that the landlord signed in receipt of the package on September 16, 2015. I accept the undisputed evidence of the tenant and find that the landlord was properly served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on September 14, 2015 and find that the landlord is deemed to have been served 5 days later as per section 90 of the Act.

### Preliminary Issue

At the outset the tenant's monetary claim was clarified that she was seeking  $\frac{1}{2}$  of the \$1,500.00 monthly rent for the return of the \$750.00 security deposit. The tenant stated that the monetary claim amount of \$725.00 was written in error and should have been \$750.00 as noted on the application,

*$\frac{1}{2}$  Rent of \$1,500.00*

I find that this was a clerical error and that the tenant's monetary claim can clearly be interpreted as \$750.00 which is ½ of the \$1,500.00 monthly rent instead of the \$725.00 amount indicated.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### 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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided direct testimony that there was a signed tenancy agreement in which the monthly rent was \$1,500.00 and that the tenant paid a \$750.00 security deposit and a \$750.00 pet damage deposit. The tenant provided undisputed evidence that the tenancy ended on July 31, 2015 and had initially provided her forwarding address verbally and then alter in writing on August 7, 2015. The tenant has submitted in support of this application a copy of the August 7, 2015 letter and a letter dated July 30, 2015 from the landlord who stated that he was withholding the \$750.00 security deposit for damages. The tenant stated that she did not consent to the landlord's actions of withholding the security deposit and is not aware of the landlord making an application for dispute for the return of the security deposit.

### 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.

I find based upon the undisputed evidence of the tenant that the landlord has withheld the \$750.00 security deposit without the consent of the tenant as shown by the

landlord's letter dated July 30, 2015. The tenant has stated that as of the date of this hearing that the landlord has not returned the \$750.00 security deposit and is not aware of any applications filed by the landlord for permission to retain the security deposit. On this basis, it is clear that the tenant has established a claim for return of the \$750.00 security deposit.

Also pursuant to section 38 (6) the landlord having failed to return the original \$750.00 security deposit within 15 days after the end of the tenancy or having receiving the tenant's forwarding address in writing, the landlord is required to pay a monetary award of \$750.00 which is equal to the amount of the security deposit.

The tenant having been successful in her application is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I grant the tenant a monetary order for \$1,550.00 which consists of:

\$750.00	Return of the Original \$750.00 Security Deposit
\$750.00	Compensation re: Failing to Comply with Sec. 38
\$50.00	Recovery of Filing Fee

This order must be served upon the landlord(s). 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 10, 2016

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Residential Tenancy Branch

