



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This is an application brought by the tenant requesting a Monetary Order in the amount of \$3600.00, and requesting recovery of his filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed

### Issue(s) to be Decided

The issue is whether the applicant has established monetary claim against the respondent, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on February 1, 2014 with a monthly rent of \$1100.00 and that a security deposit of \$550.00 was also paid at the beginning of the tenancy.

The parties also agree that the tenant vacated the rental unit on July 31, 2015.

The parties also agree that the tenant serve the landlord with a forwarding address in writing on January 15, 2016.

The tenant testified that the landlord sent him an e-mail Notice to End Tenancy on July 31, 2015 stating he was going to move into the rental unit; however the landlord never served him notice on the proper government form.

The tenant further testified that the landlord has not returned any of his security deposit, even though he did not give the landlord any permission whatsoever to keep any or all of the security deposit.

The tenant stated that he is therefore requesting an Order for double the security deposit as required under the Residential Tenancy Act.

The tenant also stated that he believes the landlord is required to pay him the equivalent of two months' rent because the landlord never moved into the rental unit.

The landlord admitted that he has not applied for dispute resolution to keep any or all of the tenant security deposit as he was unaware of the requirement to do so.

### Analysis

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on July 31, 2015 and the landlord has admitted that he had a forwarding address in writing by January 15, 2016, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the \$550.00 security deposit to the tenant for a total of \$1100.00.

I will not however allow the tenants claim for the equivalent of two months' rent because the landlord never served the tenant with a section 49 Notice to End Tenancy in the form required for it to be a valid notice. The compensation legislated under section 51 of the Residential Tenancy Act is only required if the tenant has been served with a section 49 Notice to End Tenancy and if the tenant vacates without receiving such a notice, no compensation is required.

I will allow the tenants request for recovery of the \$100.00 filing fee however, because I have still allowed a substantial portion of the tenants claim.

Conclusion

I have allowed \$1200.00 of the tenants claim and have issued a Monetary Order for the landlord to pay that amount to the tenant. The remainder of the tenants claim is dismissed without leave to reapply.

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: June 07, 2016

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Residential Tenancy Branch