



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOUGHEED VILLAGE APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The tenant attended the hearing via conference call and provided 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 via Canada Post Registered Mail on December 24, 2015. The tenant provided the Canada Post Customer Receipt Tracking number in his direct testimony. The tenant stated that an online search of the Canada Post website shows that the landlord signed in receipt of the package on December 30, 2015. I accept the undisputed affirmed evidence of the tenant that the landlord was served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The landlord is deemed to have received it 5 days later as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

### 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 seeks a monetary claim of \$170.00 for the return of a portion of the security deposit held back by the landlord without permission.

The tenant provided undisputed affirmed testimony that \$850.00 was paid for a security deposit at the beginning of the tenancy to the landlord. The tenant stated that at the end of the tenancy on October 31, 2015 a condition inspection report was completed by both parties in which the tenant agreed to forfeit \$120.00 for the cleaning of the rental. The tenant's forwarding address in writing was provided to the landlord as part of the security deposit statement on October 31, 2015.

The tenant stated that instead of withholding the \$120.00, the landlord withheld \$290.00 instead without the tenant's permission. The tenant stated that he is unaware of any applications filed by the landlord to dispute the return of the \$850.00 security deposit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

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, 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 accept the undisputed affirmed evidence of the tenant that the landlord withheld \$170.00 of the original \$850.00 security deposit without permission of the tenant, nor did the landlord apply for dispute resolution to dispute its return.

Based upon the above, I find that the tenant is entitled to the return of the \$170.00 portion of the security deposit held by the landlord without permission of the tenant or the branch.

Pursuant to section 38 (6) the landlord having failed to comply with section 38 (1) of the Act by returning the security deposit within the allowed 15 days or making an application for dispute is liable to an amount equal to the \$850.00 security deposit. As such, the tenant is also entitled to a monetary award under section 38 (6) of \$850.00.

The tenant is entitled to a total monetary award of \$1,020.00.

### Conclusion

The tenant is granted a monetary order for \$1,020.00 under the following terms:

\$170.00	Return of Security Deposit portion without permission.
\$850.00	Compensation, Landlord's failure to comply with section 38.

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: August 4, 2016

---

Residential Tenancy Branch

