



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on January 18, 2016 for the return of double the security deposit and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony. No documentary evidence was submitted prior to the hearing. There was no appearance for the Landlord during the 25 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that he served the Landlord with a copy of the Application and the Notice of Hearing documents to an agent of the Landlord at his home address. Based on the undisputed oral evidence of the Tenant, I find the Landlord was served with the required documents for this hearing pursuant to Section 89(1) (b) of the *Residential Tenancy Act* (the “Act”). The hearing continued to hear the undisputed oral evidence of the Tenant.

### Issue(s) to be Decided

Is the Tenant entitled to the return of double his security deposit?

### Background and Evidence

The Tenant testified that this tenancy started approximately in March 2015. The Tenant testified that he signed a written tenancy agreement but was not provided a copy of this by the Landlord. Rent for this month to month tenancy was payable in the amount of \$800.00 on the first day of each month and the Tenant testified that he paid a \$400.00 security deposit to the Landlord at the start of the tenancy which the Landlord still retains.

The Tenant testified that the tenancy ended in August 2015 and on January 21, 2016 he sent the Landlord a written letter which detailed his forwarding address. The Tenant provided the Canada Post tracking number into evidence which is documented on the front page of this decision. The Tenant testified that the Canada Post website shows that the Landlord received and signed for this on January 25, 2016.

The Tenant confirmed that he did not authorise in writing any deduction from his security deposit or allowed the Landlord to withhold it. As a result, the Tenant now seeks to claim double the amount back pursuant to the provisions of the Act.

### Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended in August 2015. I am also satisfied by the Tenant's undisputed oral evidence that the Landlord was provided with the Tenants' forwarding address in writing within one year of the tenancy ending. I also find the forwarding address was served to the Landlord by registered mail pursuant to Section 88(c) of the Act. Therefore, the Landlord would have been required to deal with the Tenant's security deposit pursuant to the provisions of the Act.

There is no evidence before me the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to keep it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord was in a tenancy agreement with the Tenant and therefore had a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep that deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an

Arbitrator, or with the written agreement of a tenant. Here the Landlord did not have any authority under the Act to keep the Tenant's security deposit.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of his security deposit in the amount of \$800.00.

As the Tenant has been successful in his Application, I also grant the filing fee of \$100.00 pursuant to Section 72(1) of the Act. As a result, the Tenant is issued with a Monetary Order for a total amount of \$900.00. This order must be served on the Landlord. The Tenant may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court if payment is not made. Copies of the order are attached to the Tenant's copy of this decision. The Landlord may also be held liable for the costs of enforcing the Monetary Order.

### Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. The Tenant is granted a Monetary Order of \$900.00 for double the amount including the filing fee.

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: September 06, 2016

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Residential Tenancy Branch