



# Dispute Resolution Services

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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 his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend the hearing or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on April 18, 2016 and has provided the Canada Post Customer Receipt Tracking number in his direct testimony. The tenant stated that the package was returned as "unclaimed" after repeated attempts at service were made in which a notice of attempted service was left at the rental unit. I accept the undisputed affirmed evidence of the tenant and accept that the landlord was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 18, 2016. Although the landlord did not claim the package, the landlord is deemed served with the package 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 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 undisputed affirmed testimony that the tenancy ended on February 28, 2016 and that a written request providing the tenant's forwarding address in writing was sent to the landlord on March 9, 2016 for the return of the \$450.00 security deposit. The tenant stated that at no time was permission given to the landlord to retain the security deposit nor is the tenant aware of

an order from the Residential Tenancy Branch for the landlord to retain it. The tenant stated that as of the date of this hearing the landlord still retains the \$450.00 security deposit.

The tenant also submitted in support of the application a photograph of the letter dated March 9, 2016 providing the tenant's forwarding address in writing requesting 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.

I accept the undisputed affirmed evidence of the tenant and find that a monetary claim for return of the \$450.00 security deposit has been established. The landlord did not have permission from the tenant to retain the security deposit, nor is the landlord in possession of an order from the Residential Tenancy Branch authorizing him to retain it.

The landlord failed to comply with section 38 (1) and is required to pay a monetary award equal to the original \$450.00 security deposit pursuant to section 38 (6) of the Act.

The tenant has established a total monetary claim for \$900.00.

The tenant having been successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$1,000.00.

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 14, 2016

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Residential Tenancy Branch