



# 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 his security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant, the tenant's interpreter and the landlord's two agents (collectively the "landlord") attended the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence.

### Issue(s) to be Decided

Is the tenant authorized to obtain a return of all or a portion of his security deposit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

As per the testimony of the parties, the tenancy began on January 1, 2007 on month to month basis. Rent in the amount of \$986.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$400.00 at the start of the tenancy. The tenant vacated the rental unit on January 2, 2015.

Neither party presented a copy of a move-inspection report. When asked if a move-in inspection report was completed the landlord testified that she was unable to locate one. The tenant testified that he did not receive a copy of a move-in inspection report. The parties agreed that they conducted a move-out inspection report together on January 2, 2015.

### Tenant

Although the tenant agreed in writing that the landlord could retain a portion of the \$400.00 security deposit, he understood from the landlord that if he rectified the deficiencies he would receive his full deposit back. He testified that he rectified the identified issues yet did not receive his security deposit back. The tenant stated that after he provided his forwarding address in writing to the landlord in February of 2015, he received \$71.09 of his \$400.00 security deposit.

### Landlord

The landlord testified that she did not receive the tenant's forwarding address in writing; rather she received a voicemail message on January 28, 2015 with the tenants forwarding address. The landlord agreed that the tenant was told the deductions agreed to in writing would not be applied if he rectified them. It is the landlord's position that the tenant did not rectify all of the issues therefore deductions were applied and the remaining \$71.09 of the \$400.00 security deposit was mailed to him.

### Analysis

When a landlord fails to properly complete or provide a move-in condition inspection report, the landlord's right to retain the security deposit, even if the tenant provides written authorization, is extinguished. Because the landlord in this case did not provide a move-in condition inspection report, she lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing.

Although the tenant testified that he provided his address in writing to the landlord in February of 2015, the landlord disputes this and the tenant has not provided a copy of this letter to substantiate this claim. In the absence of sufficient evidence, I find the tenant did not provide his forwarding address in writing, in February of 2015.

Section 88 of the *Act* sets out how documents may be delivered. Voicemail is not an acceptable method of service pursuant to section 88 of the *Act*. Accordingly, the tenant did not provide his forwarding address to the landlord in compliance with the *Act* when he delivered his forwarding address by voicemail to the landlord on January 28, 2015.

Section 71(2)(c) allows me to order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*. In this case the landlord acknowledged receipt of the January 28, 2015 voicemail which contained the tenant's forwarding address. It is clear that the landlord had this address in its possession. I find, pursuant to paragraph 71(2)(b), that the landlord received the tenant's forwarding address on January 28, 2015, the date the address was forwarded to the landlord by voicemail. As the landlord had actual notice of the tenant's forwarding address, I order that the tenant's forwarding address was sufficiently delivered for the purposes of this *Act*.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenant's entire security deposit within 15 days of having received his forwarding address on January 28, 2015, section 38 of the *Act* requires that the landlord pay the tenant double the amount of the deposit.

Therefore, I find the tenant is entitled to double the value of his security deposit in the amount of \$728.91 ( $\$400.00 \times 2 = \$800.00 - \$71.09$ ).

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee, for a total award of \$828.91.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$828.91 against the landlord.

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: January 25, 2017

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Residential Tenancy Branch