



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Relevant Background and Evidence

The tenancy started on either November or December 2014 and ended on either July 15 or 20, 2016. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit.

The Tenant states that the forwarding address was provided to the Landlord on July 20, 2016. The Landlord states that she never received any forwarding address. The Landlord also states that she went to the forwarding address to deliver an evidence package but was told that the Tenant did not live there and the package was not accepted.

The Tenant states that no move-in inspection was conducted and no report was ever provided to the Tenant. The Landlord states that the Parties mutually conducted a move-in condition inspection and that the Tenant took the copy of the move-in report for photocopying and did not return the report.

The Tenant states that at move-out the Landlord was called to come up and do an inspection. The Tenant states that the Landlord came upstairs looked around and said everything was fine. The Landlord states that on July 20, 2016 the Tenant was called to come to the unit and make arrangements for a move-out inspection. The Landlord states that the Tenant was then told to come and remove things left in a cupboard. The Landlord states that this was the second offer for a move-out inspection.

The Landlord states that the security deposit was not returned and that no application was made to claim against the security deposit. The Tenant claims return of the security deposit.

### Analysis

Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord made two offers for a move-out inspection and the tenant did not participate on either condition. Given the Landlord's evasive evidence in relation to an offer for a move-out inspection I find that I prefer the Tenant's evidence that no move-out inspection was offered. As a result I cannot find that the Tenant's right to return of the security deposit was extinguished.

Section 38 of the Act provides that within 15 days after the later 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 for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Nothing in the Act requires a tenant to provide a residential address as a forwarding

address. As the Landlord did not make an application to claim against the security deposit within 15 days of the receipt of the forwarding address I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of **\$1,000.00**. The Tenant is also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$1,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 27, 2017

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Residential Tenancy Branch

