



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD

### Introduction

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*;
- a Monetary Order for money owed or compensation for damage or loss under section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Only the tenant appeared at the hearing. He was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he sent his Tenant's Application for Dispute Resolution ("Application for Dispute Resolution") by Registered Mail to the landlord on December 21, 2016. A Canada Post tracking number was provided to the hearing. Pursuant to sections 89 and 90 of the *Act*, the landlord is deemed to have been served with the tenant's Monetary Order and Application for Dispute on December 26, 2016.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

### Background and Evidence

The tenant provided undisputed testimony that he occupied the rental unit starting in the summer of 2012. In February 2016 the home containing the rental unit was bought and the individual named in this proceeding as the respondent became the landlord. The tenant explained that his tenancy continued with this person until August 15, 2016.

Rent was \$950.00 per month and a security deposit of \$450.00 continues to be held by the landlord.

The tenant stated that following the end of his tenancy on August 15, 2016 the landlord wrote him a cheque for \$450.00 as reimbursement for the security deposit. The tenant explained that shortly after receiving the cheque he attempted to cash it and it was returned to him by the bank.

On October 29, 2016 the tenant said that he left a copy of the Deposit Return Letter that he received from the bank, along with a copy of his new mailing address with the landlord. The tenant claimed that the landlord took no action to rectify the situation of the returned cheque. This inaction led the tenant to file an Application for Dispute Resolution.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and, or upon receipt of the 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 section 38(6)(b) of the *Act*, equivalent to double 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 as per section 38(4)(a) of the *Act*, or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy pursuant to section 38(3)(b) of the *Act*.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address received on October 29, 2016 or following the conclusion of the tenancy on August 15, 2016.

Pursuant to section 38(6)(b) of the *Act*, the landlord is required to pay a monetary award equivalent to double the value of the security deposit. I am making a Monetary Order in the tenant's favour in the amount of \$900.00.

As the tenant was successful in his application, he is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,000.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 8, 2017

---

Residential Tenancy Branch