



# 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:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant provided evidence that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 20, 2016 and has provided a copy of the Canada Post Customer Receipt Tracking label as confirmation. Both parties confirmed receipt of the submitted documentary evidence provided by the other party. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am sufficiently satisfied that both parties have been properly served as per section 90 of the Act.

The tenant has also filed an amendment to the monetary claim to increase the amount from \$950.00 to \$1,050.00 for recovery of the tenant's filing fee. The landlord acknowledged receiving the tenant's amended application.

### 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.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on August 31, 2016. The monthly rent was \$1,900.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$950.00 was paid on August 15, 2015.

The tenant seeks a monetary order for return of the \$950.00 security deposit and recovery of the \$100.00 filing fee.

Both parties agreed that the tenancy ended on July 31, 2016 and that the landlord still holds the \$950.00 security deposit as of the date of this hearing. Both parties confirmed that the landlord received the tenant's forwarding address in writing via email on August 1, 2016.

### 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.

In this case, both parties have confirmed that the landlord holds the \$950.00 security deposit as of the date of this hearing. Both parties confirmed that the landlord was not given permission by the tenant to retain the security deposit nor has the landlord filed an application to dispute the return of the security deposit in relation to a claim.

As such the landlord has failed to comply with section 38 (1) of the Act and the tenant has established a claim for return of the original \$950.00 security deposit and has extinguished his right against the security deposit. The landlord as such is subject to section 38 (6) of the Act and is required to pay an amount equal to the \$950.00 security deposit.

The tenant has established a total monetary claim of \$1,900.00.

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

Conclusion

The tenant is granted a monetary order for \$2,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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 17, 2017

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Residential Tenancy Branch