



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      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*.

While the tenant had attended the hearing by way of conference call, the landlord did not. I waited until 1:48 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant provided undisputed testimony that the landlord was served with the tenant's application for dispute resolution hearing ('Application') and evidence by way of Registered Mail on January 13, 2017. The tenant submitted a tracking number in her evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on January 18, 2017, five days after mailing.

### **Background and Evidence**

The tenant provided undisputed, sworn testimony at this hearing as the landlord did not attend. The tenant testified that she had vacated the premises in September of 2016. The tenant testified that the landlord had collected a security deposit in the amount of \$750.00 on August 22, 2015, at the beginning of the tenancy. The tenant testified that a portion of the security deposit was returned to her co-tenant, with \$450.00 remaining,

which the landlord still holds. The tenant submitted a copy of the written tenancy agreement which states that rent was \$1,500.00 per month, and a \$750.00 security deposit was paid at the time this agreement was signed.

The tenant testified that she had sent a letter to the landlord on December 7, 2016 notifying the landlord of her forwarding address, and requesting the return of her security deposit. In accordance with section 90 of the Act, the letter is deemed served on December 12, 2016, five days after mailing. The tenant stated that she had not received any response from the landlord, nor has her portion of the security deposit been returned to her. The tenant did not submit a copy of this letter in her evidence, but she read the letter during the hearing.

The tenant testified that the landlord did not perform a move in, or move out inspection for this tenancy.

### **Issues(s) to be Decided**

Is the tenant entitled to a return of her security deposit? Is the tenant entitled to a monetary award equal to her security deposit because the landlord has failed to comply with the terms of 38(1) of the *Act*?

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after December 12, 2016, to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the undisputed evidence before me, I find that the landlord neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that she had not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a

monetary order amounting to double the value of his security deposit with interest calculated on the original amount only. No interest is payable.

### **Conclusion**

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$450.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	450.00
<b>Total Monetary Order</b>	<b>\$900.00</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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 Orders 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: March 17, 2017

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Residential Tenancy Branch