



# Dispute Resolution Services

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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 all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

The tenants participated in this hearing. The landlord was represented by legal counsel. Counsel advised that the landlord had not been served the Notice of Hearing package, Application for Dispute Resolution or any documentary evidence for this hearing.

The tenants testified and supplied documentary evidence that they served the landlord with the Notice of Hearing, Application for Dispute Resolution and documentary evidence on October 7, 2016. The tenants provided tracking information from Canada Post indicating the mail had been signed for October 11, 2016. I find the landlord has been duly served in accordance with the Act. Based on the above, I am satisfied that the landlord has been served with all the documents noted above and the hearing proceeded and completed on this date. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his 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, Evidence

The tenant's testimony is as follows. The tenancy began on September 1, 2014 and ended on August 31, 2016. The tenants were obligated to pay \$1550.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$775.00 security deposit and a \$775.00 pet deposit. PL testified that a written condition inspection report was conducted at move in. PL testified that at the move out condition inspection the landlord advised him of some deficiencies with the unit that she wanted addressed. PL testified that the deficiencies were corrected and that the landlord verbally stated that everything was fine. PL testified that he provided his forwarding address in writing to the landlord on August 31, 2016. PL testified that he also sent it by e-mail on September 16, 2016. PL testified that the landlord sent them a cheque for \$1550.00 in early November. The tenants testified that they are still seeking the doubling provision under Section 38 of the Act as the landlord has not complied with it along with the recovery of their \$100.00 filing fee.

Counsel for the landlord made the following submissions. Counsel submits that the tenants have not provided proof that they gave the landlord their forwarding address in writing on August 31, 2016. Counsel submits that sending their forwarding address by e-mail is not an appropriate means of service. Counsel submits that the landlord only received the tenants forwarding address when she received their application for dispute resolution, as a result, the tenants have not taken the appropriate steps in providing their forwarding address and therefore the doubling provision doesn't apply. Counsel submits that the landlord has returned the original deposits and that the matter should be dismissed.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenants said they are applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

PL provided a copy of the email that he sent the landlord on September 16, 2016 that provided his forwarding address. The landlord responded to that e-mail only 37 minutes later asking to meet up. I am satisfied that the tenants have provided their forwarding address to the landlord and that the landlord received it on September 16, 2016 thus “triggering” the doubling provision of Section 38 of the Act. The landlord had 15 days to either return the deposit or file an application for dispute resolution, the landlord did neither. Based on the testimony of the tenants and the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenants are entitled to the return of double their deposits in the amount of  $\$1550.00 \times 2 = \$3100.00$  minus the  $\$1550.00$  already received for an award of  $\$1550.00$ .

The tenants are also entitled to the recovery of the  $\$100.00$  filing fee.

### Conclusion

The tenants have established a claim for  $\$1650.00$ . I grant the tenants an order under section 67 for the balance due of  $\$1650.00$ . 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: April 05, 2017

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Residential Tenancy Branch