



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of double her security deposit.

The tenant and a law student assisting the tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant stated that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on October 13, 2016, and submitted a tracking number in evidence which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking information the registered mail package was returned to the sender as "unclaimed". Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find the landlord was served on October 18, 2016, which is five days after the registered mail package was mailed. I also note that failure or neglect on the part of the landlord to pick up a registered mail package does not constitute grounds for a Review Consideration. Given the above, the hearing proceeded without the landlord who has been deemed served.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under section 38 of the *Act*?

Background and Evidence

According to the tenant who was affirmed, the tenant lost her written tenancy agreement as it was taken from her room during the tenancy while she was out of the rental unit. The tenant confirmed that a month to month tenancy began on June 2, 2016 and that she vacated on June 28, 2016 at the request of the landlord. The tenant testified that she paid the landlord a \$425.00 security deposit at the start of the tenancy which has not been returned by the landlord.

The tenant affirmed that she served her written forwarding address on July 3, 2016 by placing the written forwarding address in the landlord's mail slot. The tenant has not received any of her security deposit back from the landlord and is requesting double the amount of her security deposit as a result pursuant to section 38 of the *Act*. The tenant confirmed that she did not give the landlord permission to retain any amount of the \$425.00 security deposit.

Analysis

Based on the above, and the undisputed documentary evidence and the undisputed testimony and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

Firstly, I note that the landlord was deemed served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing which I find results in this tenant's Application being unopposed by the landlord. Secondly, there was no evidence before me to support that the tenant had agreed, in writing, that the landlord could retain any portion of the tenant's \$425.00 security deposit, which has accrued no interest to date. Thirdly, there was also no evidence to show that the landlord applied for dispute resolution, within 15 days of July 6, 2016. The date of July 6, 2016 is used as it is later than the end of tenancy date of June 28, 2016 when the tenancy ended when the tenant vacated the rental unit. In addition, I accept the undisputed testimony that the tenant delivered her written forwarding address in writing to the landlord by placing it in the mail slot of the landlord and that pursuant to section 90 of the *Act* is the equivalent of posting the written forwarding address to the landlord's door and is deemed served three days after it was placed in the landlord's mail slot.

Section 38 of the *Act* applies and states:

**Return of security deposit and pet damage deposit**

**38 (1) 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.**

**(6) 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.**

[My emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to apply for dispute resolution or return the tenant's security deposit in full 15 days after July 6, 2016, the date the landlord is deemed to have been served with the tenant's written forwarding address.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days of July 6, 2016 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue. As a result, I grant the tenant **\$850.00** pursuant to section 67 of the *Act* which is double the original security deposit amount of \$425.00.

Based on the above and pursuant to section 67 of the *Act*, I grant the tenant a total monetary order in the amount of **\$850.00**.

**I ORDER** the landlord to comply with section 38 of the *Act* in the future.

### Conclusion

The tenant's application is fully successful.

The landlord has breached section 38 of the *Act* and has been ordered to comply with 38 of the *Act* in the future.

The tenant has been granted a monetary order in the amount of \$850.00 comprised of double the security deposit of \$425.00. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 10, 2017

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Residential Tenancy Branch