



# Dispute Resolution Services

Page: 1

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;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 17, 2016 and has submitted a copy of the Customer Tracking label and Receipt as confirmation. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been properly served as per section 88 and 89 of the Act.

The tenant stated that the amendment to the application for dispute was filed on October 21, 2016 for which the landlord was served a copy of on October 24, 2016 via Canada Post Registered Mail. In support of this claim the tenant has submitted a copy of the Canada Post Customer Receipt Tracking label. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been properly served with the amended application for dispute and find that the landlord has been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to monetary order for money owed or compensation for damage or loss, return of double 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 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$5,900.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$2,950.00 was paid. A key fob deposit of \$250.00 was paid.

The tenant seeks an amended monetary claim of \$6,400 which consists of:

\$2,950.00	Return of Original Security Deposit
\$2,950.00	Compensation, Landlord fail to comply with Sec. 38(6)
\$250.00	Return of Key FOB Deposit
\$250.00	Compensation for FOB Deposit

The tenant provided undisputed affirmed evidence that the tenancy ended on August 23, 2016 and that the landlord was provided her forwarding address in writing on September 19, 2016 via Canada Post Registered Mail.

The tenant also states that at the end of tenancy, the tenant returned the Key FOB for which the landlord has failed to return the \$250.00 Key FOB Deposit as shown in the signed tenancy agreement.

The tenant provided undisputed affirmed evidence that no permission was given to keep the security deposit nor is the tenant aware of an application filed by the landlord made to dispute its return.

In support of this claim the tenant provided copies of the signed tenancy agreement, a Canada Post Customer Receipt Tracking label dated September 19, 2016, a copy of the written letter providing the tenant's forwarding address in writing and a Canada Post Customer Receipt Tracking label dated October 17, 2016,

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed affirmed evidence of the tenant and find that the tenancy ended where the key fob was returned to the landlord. The landlord failed to return the \$250.00 key fob deposit. As such, I find that the tenant has established a claim for the \$250.00.

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, I accept the undisputed affirmed evidence of the tenant and find that the tenancy ended on August 23, 2016 and that the tenant provided her forwarding address in writing for the return of the \$2,950.00 security deposit. The tenant has provided undisputed affirmed evidence that no permission was given to the landlord to retain the security deposit nor is the tenant aware of an application for dispute filed for its return by the landlord. The tenant confirmed that as of the date of this hearing the landlord has not returned the security deposit. I find that the tenant is entitled to the return of the original \$2,950.00 security deposit.

I also find that as the landlord has failed return or apply for dispute of the security deposit within the allowed 15 day period, that the landlord has failed to comply with section 38 (6) of the *Act*. As such, the landlord is required to pay a monetary award to the tenant equal to the \$2,950.00 security deposit.

The landlord has established a total monetary claim of \$6,150.00.

Having been successful, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$6,250.00.

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: April 12, 2017

---

Residential Tenancy Branch