



# 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 an application by the tenant under the *Residential Tenancy Act* (the “Act”) for a monetary order for return of double the security deposit and for recovery of the application filing fee.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and had the opportunity to present her evidence orally and in written and documentary form, and to make submissions.

The tenant testified that she served the landlord with her application and the notice of hearing by registered mail to the landlord’s last known address on March 3, 2017. She testified that when she vacated her rental unit the landlord was living in another unit in the same building, and that she used this address for service. The tenant supplied a Canada Post Registered Mail tracking number and said that the tracking information indicated that the mail had not been claimed. The tenant further testified that she also attempted to serve her landlord by messaging his employer on Facebook. His employer responded to her via Facebook and relayed a message from the landlord to the effect that he had kept her damage deposit because she had left the rental unit “trashed.”

Based on the tenant’s affirmed testimony I accept that the landlord was duly served. Section 90(a) of the Act provides that documents sent by registered mail are deemed to have been received five days after mailing. Neglect or refusal to accept registered mail does not invalidate this section of the Act. I also find under s. 71(2)(b) and (c) of the Act that the landlord has been sufficiently served.

### Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Is the tenant entitled to recover the application filing fee?

### Background and Evidence

The tenant gave undisputed affirmed testimony that this tenancy began in March, 2013 and ended on December 31, 2016. A security deposit of \$700.00 was paid at the beginning of the tenancy. The tenant vacated the premises on December 30, 2016. She sent the landlord her forwarding address by text on December 20, 2016. She did not sign over a portion of the security deposit.

The tenant further testified that the landlord asked her to pick up her security deposit refund at his residence on January 15, 2017. She picked up a cheque for \$700.00 from the landlord's doorstep and attempted to deposit it, but it bounced. A copy of the dishonored cheque, dated January 15, 2017, was in evidence.

The tenant testified that she then texted the landlord to advise him that his cheque had bounced and to ask him to send her an electronic transfer instead. The landlord did not respond to this request and has since sold the residence in which they had both lived.

The tenant also testified that the landlord did not perform an incoming or an outgoing condition inspection, and that she was unsuccessful in her attempts to arrange for an outgoing inspection with him.

### Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle these deposits as follows:

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.

(Emphasis added)

Based on the testimony and evidence, I find that the landlord is in breach of the Act. The tenant did not agree that the landlord could retain any portion of the security deposit and in fact the landlord agreed to refund it to her in full. He did not do so, however, because his cheque did not clear.

The landlord's employer has advised the tenant that the landlord has said that he is retaining the security deposit because of the state of the rental unit. However, the landlord has not applied to retain the security deposit as required by s. 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the landlord also extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The landlord is in the business of renting and has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the tenant by the landlord, who may not simply keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenant the total sum of **\$1,500.00**, comprised of double the security deposit (2 x \$700.00) and the \$100.00 fee for filing this application.

Conclusion

The tenant is given a formal 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 it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: April 25, 2017

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Residential Tenancy Branch