



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNSD

### Introduction

This hearing was scheduled to hear the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a return of the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented at the hearing by Resident Manager, M.R. (the landlord).

The tenant gave sworn testimony that an Application for Dispute Resolution and evidentiary package were sent by way of Canada Post Registered Mail to the landlord on November 8, 2016. The landlord acknowledged receipt of these packages. Pursuant to sections 88 and 89 of the *Act* the landlord is found to have been served with these documents in accordance with the *Act*.

Prior to the hearing, the landlord's evidentiary package was received by the *Residential Tenancy Branch*. The tenant provided undisputed testimony that he was not served with this package nor that he received it. As part of the landlord's evidentiary package, a document was submitted to the hearing demonstrating that the tenant had agreed in writing to surrender the security deposit. No proof of service was submitted to the hearing by the landlord and the landlord could not provide any information as to how the landlord's evidence was served to the tenant. The landlord explained that he could not offer any testimony concerning service of the evidentiary package or confirm if it had been sent to the tenant.

Due to the tenant's undisputed testimony stating he has not received the landlord's evidentiary package and because no evidence or testimony were provided by the

landlord at the hearing demonstrating that the landlord served the tenant with his evidentiary package pursuant to section 88 of the *Act*, I decline to consider the contents of the landlord's evidentiary package.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should this amount be doubled?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

Testimony was provided by the tenant that this tenancy began on May 1, 2015 and ended on September 30, 2016. Rent was \$1,275.00 per month and a security deposit of \$637.50 continues to be held by the landlord.

The landlord explained at the outset of the hearing that he had limited knowledge of the situation. He said the temporary property manager, G.Q., was the person with direct knowledge of this matter and was unavailable to appear at the hearing. The landlord was therefore basing the majority of his testimony on the documents before him at the hearing. Among these documents was a page titled, "Security Deposit Refund" that displayed the tenant's signature agreeing to surrender the entire amount of his security deposit. The tenant denied signing this document surrendering his deposit. The landlord said he could not comment on the veracity of this document as it fell within the scope of responsibilities of G.Q., who was unable to testify on the matter.

The landlord acknowledged that a condition inspection report had been performed in the rental unit on September 30, 2016. The tenant provided undisputed testimony that he provided the temporary property manager with his forwarding address in writing on this same day.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's

written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so, has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address or following the conclusion of the tenancy on September 30, 2016. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit within this 15 day time frame. It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. The landlord cannot decide to simply keep the security deposit as recourse for his loss.

The landlord acknowledged that his company kept the \$637.50 security deposit because of damages and losses incurred. The tenant gave undisputed sworn testimony that he had not signed any documents allowing the landlord to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the Act. Furthermore, the landlord did not receive an order from an Arbitrator enabling them to keep the deposit.

A document submitted to the hearing as part of the landlord's evidentiary package appears to demonstrate that the tenant agreed in writing to surrender his deposit. During the course of the hearing, the tenant testified that he had not received any evidence from the landlord prior to the start of the hearing and denied signing this document. As the temporary property manager G.Q. was not present at the hearing, the landlord was unable to provide any testimony concerning this matter.

*Residential Tenancy Branch Rule of Procedure 3.15* notes; Where possible, copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC office and served on the other party in a single complete package. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. In the event that evidence is not available when the respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17 explains that the arbitrator has the discretion to determine whether to accept documentary or digital evidence not received by another party.

I find that due to a lack of testimony and proof of service presented to the hearing by the landlord, the most reliable evidence before me at the hearing is the tenant's undisputed sworn testimony that he did not sign a statement in which he agreed to surrender his security deposit.

As the landlord has not followed the provisions of the *Act* concerning withholding a tenant's deposit, pursuant to section 38(6)(b) of the *Act*, I find that the landlord is required to pay a monetary award equivalent to double the value of the security deposit. I am therefore making a monetary award in the tenant's favour in the amount of \$1,375.00 for the security deposit that was not returned.

As the tenant was successful in his application, he may therefore, recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,375.00 against the landlord based on the following monetary awards:

<b>Item</b>	<b><u>Amount</u></b>
Return of Double Security Deposit (2 x \$637.50 = \$1,275.00)	\$1,275.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$1,375.00</b>

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with 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 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: May 11, 2017

---

Residential Tenancy Branch