



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD FF

### **Introduction**

Only the tenant applicant attended the hearing and gave sworn testimony that they served the landlord with the Application for Dispute Resolution by registered mail and personally with their forwarding address on September 10, 2016. I find the Application was served as stated but the landlord refused to claim it after notices were sent by the postal service. I find the documents were served pursuant to sections 88 and 89 of the Act and the Application is deemed to be received according to section 90 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$900 in 2011 and agreed to rent the unit for \$1800 a month. The tenant vacated the unit on August 25, 2016 and provided their forwarding address in writing on September 10, 2016 by delivering it to the landlord. The tenant state their deposit has never been returned and they gave no permission to retain any of it. The tenant said the landlord never did a move-in report and seemed happy with the condition of the home on their move-out. Then the tenant said the landlord subsequently listed deficiencies in an email but filed no Application to claim against the deposit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The Residential Tenancy Act provides:

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.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(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.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that they paid \$900 security deposit in May or June 2011, served the landlord personally with their forwarding address in writing on September 10, 2016 and vacated on August 25, 2016. I find they gave no permission for the landlord to retain the deposit and have not received the refund of their security deposit. I find the tenant entitled to recover double his security deposit.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original deposit (no interest 2011-16)	900.00
Double deposit pursuant to s. 38	900.00
Filing fee	100.00
<b>Total Monetary Order to Tenant</b>	<b>1900.00</b>

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 02, 2017

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Residential Tenancy Branch