



# 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 the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 15 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord with the tenant's application for dispute resolution hearing package on November 2, 2016, by way of registered mail. The tenant provided a copy of the Canada Post receipt and tracking number with his application. The tenant claimed that he sent it to the address provided by the landlord in all the tenancy-related documents between the parties, which is the main floor where the landlord lives in the same house where the tenant was previously occupying the basement rental unit. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on November 7, 2016, five days after its registered mailing. The Canada Post website tracking report indicates that the landlord received and signed for the package on November 7, 2016.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include both possible names for the landlord. The landlord indicated two names in the tenancy-related documents provided by the tenant for this hearing and the tenant was unsure which name was the landlord's legal name. I find no prejudice to the landlord in amending the tenant's application, as the landlord included two different names herself and the correct name is required in order to ensure that this decision and resulting monetary order are enforceable against the landlord.

### Issues to be Decided

Is the tenant entitled to a return of double the amount of his deposits?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenant testified regarding the following facts. This tenancy began on June 8, 2015 and ended on May 15, 2016. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$112.50 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement and the tenant provided a copy for this hearing.

The tenant said that the landlord did not complete move-in or move-out condition inspection reports for this tenancy. He claimed that he personally provided a written forwarding address to the landlord around May 17, 2016, by way of a letter. The tenant did not provide a copy of this letter. He stated that he did not provide written permission to the landlord to keep any amount from the deposits. He said that he did not receive an application for dispute resolution from the landlord to keep any part of the deposits.

The tenant seeks a return of double the amount of his deposits totalling \$1,075.00 and to recover the \$100.00 filing fee paid for this application.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities, based on the undisputed testimony of the tenant. The tenancy ended on May 15, 2016. The tenant did not give the landlord written permission to keep any part of his deposits. The landlord did not return the deposits or file an application to retain the deposits.

I find that the tenant did not provide a copy of the letter that he said he personally served to the landlord with his forwarding address. As the tenant is the applicant and is required to prove his claim, I find that he has failed to meet this onus. Therefore, I find that the tenant did not provide his written forwarding address to the landlord and the doubling provision of section 38 of the *Act* has not yet been triggered. I find that the tenant is not entitled to the return of double the value of his deposits. I find that the landlord's right to claim against the deposits for damages is extinguished due to her failure to complete move-in and move-out condition inspection reports for this tenancy, as required by sections 24 and 36 of the *Act*.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to a return of the original amount of his security deposit of \$425.00 and the original amount of his pet damage deposit of \$112.50, from the landlord.

As the tenant was mainly successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

#### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$637.50 against the landlord. 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 03, 2017

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Residential Tenancy Branch