



# 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 all or a portion of their security and pet deposits pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit and pet deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on March 15, 2016 and ended on October 4, 2016. The tenancy was to be a fix term that was to expire on March 15, 2017. The tenant testified that on September 22, 2016 they advised the landlord that they had found a new place in a larger city and would be moving in approximately one week. The tenant testified that they told the landlord that they would pay for all of October's rent. The tenant testified that the landlord advertised the unit for only a couple of days and then decided to sell it. The tenant testified that the landlord did not return the deposits as they felt that since the tenants broke the lease they should pay for the month of November up until the new owner took possession of the home. The tenant

testified that he provided his forwarding address in late September and again in early October to the landlord. The tenant is seeking the return of double his deposits \$1575.00.  $\times 2 = \$3150.00$ . The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that she acknowledges that she received the tenants forwarding address on October 31, 2016 but doesn't recall a time in September. The landlord testified that the tenants broke the lease and that they should be held responsible for loss of rent up until the close of the sale of the property on November 22, 2016. The landlord testified that after the tenants gave them notice, they decided to sell the property as they live on the mainland and it became more of a hassle to go over to the rental property as they were very limited in time with a young child and busy with work.

### Analysis

The landlord inquired as to whether her claims would be heard and a part of this decision even though she has not filed an application. It was explained to both parties that this decision would **only address the application before me** and that if the parties have other unresolved issues in regards to this tenancy, they are at liberty to file a separate application if they so choose. Both parties indicated that they understood.

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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

The landlord confirmed that she did not return the security and pet deposits and that she has not filed for dispute resolution in regards to this matter. Based on the testimony of the tenant, the documentary evidence before me and the landlords own testimony that she did not act in accordance with Section 38 of the Act, I find that the tenant is entitled to the return of double his deposits in the amount of \$3150.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The tenant has established a claim for \$3250.00. I grant the tenant an order under section 67 for the balance due of \$3250.00. This order may be filed in the Small Claims 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 23, 2017

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Residential Tenancy Branch