



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. As the tenancy has ended and as an order for a landlord’s compliance is only relevant to an ongoing tenancy I dismiss the claim for the Landlord’s compliance.

### Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Relevant Background and Evidence

The following are undisputed facts: The tenancy started on May 1 or 15, 2016 and ended on April 1, 2017. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. The Parties mutually conducted a move-in condition inspection with a copy of the condition report provided to the Tenant. The Landlord has not returned the security deposit and has made no application to claim against the security

deposit. The Landlord submits on the first page of a four page submission in response to the Tenant's application that "I denied the tenant the return of her security deposit, as our agreement was not respected and the rented studio was not cared for properly and needed a lot of work to restore after the tenant's departure."

The Tenant states that her forwarding address was provided by registered mail sent April 1, 2017. The Tenant provides the tracking # for that registered mail and I note that the tracking evidence indicates that the mail was delivered on April 4, 2017. The Landlord states that she did not receive any forwarding address until the Tenant's documents for this hearing were received.

The Tenant states that she did not receive any offers from the Landlord to conduct a move-out inspection. The Landlord states that sometime in the last 30 days before the end of the tenancy the Landlord offered and the Tenant agreed by either email or text to a move-out inspection at 1:00 p.m. on April 1, 2017. It is noted that the Landlord provided copies of texts that the Landlord indicates are from between the dates October 16, 2016 and March 18, 2017. The Landlord states that the police were at the unit on April 1, 2017 and that as the Tenant did not attend the Landlord completed the inspection and report. The Landlord states that no second offer for a move-in inspection was given to the Tenant.

The Tenant states that she did not receive any texts from the Landlord to conduct a move-out inspection that she is aware of. The Tenant states that the Parties were not on good terms at the end of the tenancy and that the Landlord had the police call the Tenant to tell the Tenant not to send the Landlord any more texts. The Tenant states that this occurred within days of the end of the tenancy and that the Tenant then deleted the Landlord's contact from her phone. The Landlord states that the police were asked to tell the Tenant not to make any threats and the Landlord has no idea about the request not to send the Landlord any more texts.

### Analysis

Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord has given two opportunities for inspection and the tenant has not participated on either occasion. One of the texts provided as evidence by the Landlord contains a reference to a move-out inspection on April 1, 2017 however no time is set out for that inspection and no date for that text can be discerned. None of the remaining texts provided as evidence by the Landlord contain any reference to a move-out inspection. The Landlord provided no copy of an email containing an offer for a move-out inspection. For these reasons and based on the Landlord's evidence that no second offer was made for a move-out inspection I find that the Landlord did not make at least two offers for a move-out inspection. I find therefore that the Tenant's right to return of the security deposit has not been extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the registered mail evidence I find on a balance of probabilities that the Tenant provided its forwarding address to the Landlord. Based on the undisputed evidence that the Landlord did not return the security deposit and did not make an application to claim against the security deposit within 15 days receipt of the forwarding address, I find that the Landlord must now pay the Tenant \$2,000.00. If the Landlord has a claim against the Tenant for damages that were caused during the tenancy the Landlord remains at liberty to make such an application.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,100.00**. If necessary, 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: September 21, 2017

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Residential Tenancy Branch