



# 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 attended the hearing and gave sworn testimony. They said they served the landlord with their forwarding address which was the address of a relative (for personal reasons) in writing in the mailbox on March 1, 2017. The tenant provided evidence that they served the landlord with the Application for Dispute Resolution by registered mail. I find the registered mail was sent on April 5, 2017, notices were left but it was returned to the tenant when the landlord failed to pick it up by April 25, 2017. I find the documents were served pursuant to sections 88 and 89 of the Act and deemed to be received pursuant 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 tenants attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$750 on November 1, 2016 and agreed to rent the unit for \$750 a month. The tenants said the landlord gave them no receipts or made a written tenancy agreement and they did not know their rights under the Act for this was their first rental. The tenants vacated the unit on February 28, 2017 and provided a forwarding address in writing on March 1, 2017 in the landlord's mailbox. The tenants' deposit has never been returned and they gave no permission to retain any of it.

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

**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 \$750 security deposit on November 1, 2016, served the landlord in their mailbox with their forwarding address in writing on March 1, 2017 and vacated on February 28, 2017. I find they gave no permission for the landlord to retain the deposit and they have not received the refund of their security deposit. I find the tenant entitled to recover double his security deposit. Although the landlord charged them too much for a security deposit as provided in s.19 of the Act (half of one month's rent), the landlord will bear the consequence of this in having to refund twice what they collected for a security deposit or \$750 x 2 (\$1500).

**Conclusion:**

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

Original Security Deposit	750.00
Double deposit	750.00
Filing fee	100.00
<b>Total Monetary Order to Tenant</b>	<b>1600.00</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: September 06, 2017

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Residential Tenancy Branch