



# Dispute Resolution Services

Page: 1

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* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord did not attend the hearing. The tenant appeared and was given a full opportunity to be heard, present testimony, to make submissions and to call witnesses.

The tenant testified that she sent a copy of the application for dispute resolution dated June 15, 2017 and evidence materials to the landlord by registered mail on June 19, 2017. The tenant provided a Canada Post tracking number as evidence of service. I find that the landlord was deemed served in accordance with section 88, 89 and 90 of the *Act* on June 24, 2017 five days after mailing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security 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 and Evidence

The tenant gave undisputed testimony regarding the following facts. This tenancy began in October, 2015. The tenant paid a security deposit of \$500.00 at the start of

the tenancy. No condition inspection report was prepared or requested by the landlord at either the start or the end of the tenancy.

The tenancy ended on April 30, 2017. The tenant gave the landlord her forwarding address in writing in a letter dated May 8, 2017. The tenant did not give the landlord authorization to deduct any amount from the security deposit for this tenancy. As of the date of the hearing, November 23, 2017, the landlord has not returned any portion of the security deposit for this tenancy to the tenant.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

Additionally, section 24 of the *Act* provides that if the landlord does not complete a condition inspection report in accordance with the guidelines, they extinguish their right to claim against the security deposit.

I accept the undisputed evidence that the tenant provided the landlord with their forwarding address in writing on May 8, 2017. I accept the evidence of the tenant that the landlord failed to return the full security deposit to the tenant within 15 days of May 8, 2017, the time frame granted under section 38 (1)(c) of the *Act*. The landlord's right to claim against the security deposit was extinguished by their failure to complete a condition inspection report and no claim was filed by the landlord in any event.

I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,000.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee for this application.

The tenant also claims the cost of service by registered mail on the landlord, parking and other costs associated with filing the application. The Act does not allow for the recovery of costs such as mailing and parking, therefore I dismiss this portion of the tenant's claim.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,100.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and 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: November 23, 2017

---

Residential Tenancy Branch