



# 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* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent/son, A.S. requested permission to act for his father in this matter. The tenant objected stating that it was not the named landlord. After some discussions regarding the tenant's application and the documentation in the landlord's agent's possession, I am satisfied that the landlord's agent, A.S. may act on behalf of his father. The landlord's agent demonstrated sufficient knowledge and access regarding the tenancy to proceed with the hearing.

Both parties also confirmed that the tenant served the landlord with the submitted documentary evidence on August 21, 2017 via Canada Post Registered Mail. The landlord confirmed that no documentary evidence was submitted. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue

At the outset a request from the landlord/respondent to adjourn the hearing was discussed. The landlord had provided a written request to adjourn the hearing until March 12, 2018 as the landlord would be out of country from January 14, 2018 to March 12, 2018 due to a visit to his sister for severe medical reasons. The landlord's agent (the landlord) stated as such, an adjournment was no longer required and was withdrawn.

The tenant clarified that he was seeking a return of double the security deposit and recovery of the filing fee as per section 38 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

### Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that a signed tenancy agreement was made (but neither party submitted) in which the tenancy began in August of 2008 on a month-to-month basis. The monthly rent was \$1,700.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$850.00 was paid.

The tenant seeks a monetary claim of \$1,800.00 and recovery of the \$100.00 filing fee which consists of:

\$850.00	Return of Original Security Deposit
\$850.00	Compensation, re: Failure to Comply Sec. 38(6)
\$100.00	Recovery of Filing Fee
\$1,800.00	

Both parties confirmed that the tenancy ended on July 8, 2017 and that the tenant provided his forwarding address in writing to the landlord in a letter dated June 17, 2017 via Canada Post Registered Mail.

The landlord stated that the \$850.00 security deposit was held in dispute over damage caused by the tenant. Both parties confirmed that the tenant did not provide permission to the landlord to retain the security deposit. The landlord also confirmed in his direct testimony that an application for dispute to retain the security deposit against damages was not filed.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of both parties that the tenancy ended on July 8, 2017 and that the tenant had provided his forwarding address in writing to the landlord in a letter dated June 17, 2017 via Canada Post Registered Mail. The landlord provided direct testimony that permission to retain the security deposit was not obtained from the tenant, nor did the landlord make an application to dispute for authorization to retain it against a claim in damages. As such, I find that the tenant is entitled to return of the original \$850.00 security deposit.

I also find based upon the undisputed evidence of both parties the landlord upon receiving the tenant's forwarding address in writing for return of the security deposit on June 17, 2017 failed to return it within 15 days after the tenancy ended on July 8, 2017. As such, the landlord is required to pay a monetary award equal to the \$850.00 security deposit under section 38 (6) of the Act in compensation.

The tenant has established a monetary claim of \$1,700.00.

The tenant having been successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$1,800.00.

This order must be served upon the landlord. Should the landlord fail to comply, the 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: January 26, 2018

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Residential Tenancy Branch