



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* ("Act") for:

- a return of the filing fee pursuant to section 72 of the *Act*; and
- an order directing the landlord to return her security deposit pursuant to section 38 of the *Act*.

Only the tenant appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant explained that she sent a copy of her application for dispute resolution, along with her evidentiary package to the landlord by way of Canada Post Registered Mail. She said that this package was sent on August 2, 2017 and she provided the Canada Post Tracking Number to the hearing. While the tenant stated that her application for dispute resolution and evidentiary packages were returned to her by Canada Post, pursuant to sections 88, 89 & 90 of the *Act*, I deem the landlord served with them five days after their posting, on August 7, 2017.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

The tenant provided undisputed testimony to the hearing that this tenancy began on May 1, 2015 and ended on July 1, 2017. Rent was \$1,795.00 per month, and a security deposit of \$900.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant said that she sent the landlord a copy of her forwarding address by email on July 6, 2017. The tenant continued by explaining that the landlord replied to this email acknowledging receipt of her forwarding address.

The tenant explained that no condition inspections were conducted by the parties at the start or at the conclusion of the tenancy. Furthermore, she stated that she did not provide the landlord with permission to withhold any part of her security deposit.

### Analysis

Section 38 of the *Act* requires the landlord to either return a 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 and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on July 6, 2017, or following the conclusion of the tenancy on July 1, 2017. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

No evidence was produced at the hearing that the landlord received the tenant's written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling him to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,800.00, representing a doubling of the tenants' security deposit.

As the tenant was successful in her application, she may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,900.00 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.

<b>Item</b>	<b><u>Amount</u></b>
Return of Security Deposit w penalty under section 38 of the <i>Act</i> (2 x 900.00)	\$1,800.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$1,900.00</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: January 29, 2018

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Residential Tenancy Branch