



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the *Act*) for the return of the security deposit and the recovery of the filing fee paid for this application.

The Tenant was present at the teleconference hearing while no one attended for the Landlord. The phone line remained open for the duration of the hearing which lasted approximately 14 minutes. As the Landlord did not call in during this time, service of the Notice of Dispute Resolution Proceeding (“Notice of Hearing”) was addressed.

The Tenant provided affirmed testimony that the Notice of Hearing, along with his evidence, was sent to the Landlord by registered mail. The Tenant also had a friend drop off the Notice of Hearing and evidence package at the Landlord’s office to ensure it was received. Although the Tenant did not remember the exact date that the registered mail was sent or the package dropped off in person, he testified that it was within the timeframe set out by the Residential Tenancy Branch, which is why he served two different ways to ensure service on time. I accept the Tenant’s undisputed testimony that the Notice of Hearing was served upon the Landlord by registered mail as well as in person at the Landlord’s office.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

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

### Background and Evidence

The tenancy began on April 30, 2016 and continued for one year, ending on April 30, 2017. Monthly rent in the amount of \$985.00 was due on the last day of the month. A security deposit in the amount of \$492.50 was paid when the tenancy commenced. There was no pet damage deposit paid.

The condition inspection report regarding this tenancy was submitted as evidentiary material by the Tenant. The move-in inspection was completed on April 30, 2016 and signed by both the Tenant and an agent for the Landlord. The move-out inspection was completed on April 30, 2017 and signed by both the Tenant and an agent for the Landlord.

The Tenant did not give written permission for any deductions from his security deposit on the condition inspection report and testified confirming this.

The Tenant provided his forwarding address to the Landlord in writing on the condition inspection report at move-out on April 30, 2017.

The Tenant testified and provided evidence showing that on May 30, 2017 he received a cheque in the amount of \$217.50. He was advised by an agent for the Landlord that the rest of the security deposit amount would be forthcoming and in the meantime, the amount provided should be accepted.

The Tenant testified that he was unsure as to why he received a partial return of the security deposit and why it was in the amount of \$217.50. He reported during the hearing that he has attempted to contact the Landlord many times to inquire as to the return of the rest of his security deposit, but has not heard back. The Tenant submitted evidentiary material of emails he sent to the Landlord in September and October 2017, asking about the return of his security deposit.

### Analysis

I refer to Section 38(1) of the *Act*:

- 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.

Based on the undisputed testimony and evidence of the Tenant, I find that the Landlord was provided with the Tenant's forwarding address in writing on April 30, 2017. As such, I find that the Landlord did not comply with Section 38(1) as the Tenant's security deposit was not returned in full and the Tenant is not aware of an application for dispute resolution claiming against the remainder of his security deposit.

Section 38(4) of the *Act* states that a Landlord may retain an amount from the security deposit that a tenant has agreed to in writing. As per the condition inspection report and the Tenant's undisputed testimony, I find that the Tenant did not agree to the Landlord withholding any amount from the security deposit.

As I have determined that the Landlord did not comply with Section 38(1) of the *Act* as outlined above, Section 38(6) states that when a landlord is not in compliance with Section 38(1), they must pay a tenant double the security deposit. Accordingly, I find that the Tenant is entitled to the return of double their security deposit.

As the Tenant was successful in their application, I also award the recovery of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be issued for the full amount owing as calculated below.

*Monetary Order Calculations*

Security deposit paid by Tenant	\$492.50
Amount to double security deposit	\$492.50
Recovery of filing fee	\$100.00
Less amount already returned	(\$217.50)
<b>Total owing to Tenant</b>	<b>\$867.50</b>

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of \$867.50 for the balance of double the security deposit and the recovery of the filing fee for this application, less the amount returned by the Landlord. The Tenant is provided with this 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: May 18, 2018

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Residential Tenancy Branch