



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for the following:

- authorization to obtain a return of all or a portion of the security deposit pursuant to Section 38; and
- authorization to recover the tenant's filing fee for this application from the landlord pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to be heard, present evidence, and make submissions. The landlord was nine minutes late joining the hearing which was in progress. The tenant's representative PW (the *tenant*) made submissions on behalf of the tenant.

The tenant testified the Notice of Hearing, the Application for Dispute Resolution, and the tenant's documents were served on the landlord by registered mail on November 21, 2017. The tenant submitted a Canada Post tracking number as evidence in support of service. The landlord is deemed served with the documents on November 26, 2017, the 5<sup>th</sup> day after mailing, pursuant to Section 90 of the *Act*.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because 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 of this application from the landlord?

### Background and Evidence

The landlord and the tenant agree on the following. The parties signed a month to month tenancy agreement on November 1, 2016 at a rental of \$1,650.00 a month payable on the first day of each month.

In mid-October 2016, the tenant provided a security deposit in the amount of \$825.00 to the landlord which he still holds. No condition inspection report was prepared at either the start or the end of the tenancy. The tenant moved out of the unit on July 31, 2018.

On the last day of the tenancy, the tenant provided notice in writing to the landlord of his forwarding address for the return of the security deposit. The landlord acknowledged receipt of the forwarding address to which he attempted to mail a return of a portion of the security deposit. The tenant refused to accept a portion of the security deposit.

The tenant testified he had not provided written authorization to the landlord permitting him to retain any portion of the security deposit.

The landlord submits he is entitled to keep most of the security deposit as compensation for cleaning of the unit and replacement of a vacuum cleaner. The landlord testified he has not filed an Application for Dispute Resolution seeking to retain any portion of the security deposit for damages to the unit.

#### 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 pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to Section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to Section 38 of the *Act*. I accept the parties' evidence that the tenant gave the landlord written notice of his forwarding address on July 31, 2017, the last day of the tenancy.

In addition, the tenant testified and the landlord agreed no condition inspection report was prepared at the start or end of the tenancy as required under Sections 23 and 35 of the *Act*. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The Section reads in part:

*24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*...*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the start and at the end of the tenancy.

Under these circumstances and in accordance with Sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a Monetary Order of \$1,650.00 as well as reimbursement of the filing fee of \$100.00 for a total of \$1,750.00 calculated as follows:

Security deposit	\$825.00
Doubling of security deposit under Section 38(6)	\$825.00
Recovery of filing fee under Section 72	\$100.00
<b>Amount owing tenant by landlord</b>	<b>\$1,750.00</b>

No interest is payable over this period.

#### Conclusion

I grant the tenant a Monetary Order pursuant to Section 67 in the amount of **\$1,750.00** as described above.

This Order must be served on the landlord. If the landlord fails to comply with this Order the tenant may file the Order in the Provincial Court (Small Claims) to be 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 17, 2018

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Residential Tenancy Branch