



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MARINE VIEW MANOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

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

An agent for the Landlord (the “Landlord”) was present for the duration of the teleconference hearing, as was the Tenant. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding documents, as well as copies of the Tenant’s evidence. The Landlord did not submit any documentary evidence prior to the hearing.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to provide testimony, present evidence and ask questions of the other party. 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.

### Issues to be Decided

Is the Tenant entitled to a Monetary Order for the return of the security deposit?

Is the Tenant entitled to a Monetary Order for compensation?

### Background and Evidence

The Tenant and Landlord were in agreement as to the terms of the tenancy. The tenancy began in 2014 for \$950.00 per month due on the first day of the month. A security deposit in the amount of \$475.00 was paid at the outset of the tenancy. During the tenancy the rent was increased to \$1,000.00 per month.

On December 1, 2017, a tenancy agreement was signed for a fixed term of one year, to end on November 30, 2018. The Tenant provided notice on January 16, 2018 that he would be moving out on February 28, 2018. The Landlord and Tenant agreed that the Tenant moved out on February 20, 2018 which is the date when the move-out Condition Inspection Report was completed.

The Tenant testified that he participated in the move-out Condition Inspection Report, but he was never provided with a copy of the report. He submitted that he provided his forwarding address on the Condition Inspection Report. As he had not received his security deposit back after this, he sent a letter on March 21, 2018 by registered mail and provided his forwarding address again. A copy of this letter was submitted in evidence and also asked for a copy of the Condition Inspection Report and the return of the Tenant's post-dated cheques.

The Tenant testified that he did not agree to the Landlord withholding any amount from the security deposit and would like the full amount of \$475.00 returned. The Tenant has also filed for the return of \$10.70, for the costs incurred from sending the Landlord the letter dated March 21, 2018 by registered mail requesting the Condition Inspection Report and post-dated cheques.

The Tenant has also filed for \$45.00 in compensation for the costs incurred from putting a stop on his post-dated cheques through the bank. The Tenant submitted that neither of these costs would have occurred had the Landlord provided him with a copy of the Condition Inspection Report and returned his post-dated rent cheques.

The Tenant submitted in evidence the receipt for sending the letter by registered mail, as well as statements from his bank showing \$45.00 in charges for stopping payments on the post-dated cheques.

The Landlord testified that they are still in possession of the Tenant's security deposit in the amount of \$475.00. They submitted that the Tenant broke his fixed-term tenancy early and therefore owes the Landlord for a loss of rent. The Landlord testified that they were not able to re-rent the rental unit until May 1, 2018.

The Landlord testified that they have not filed an Application for Dispute Resolution to withhold the security deposit and that the Tenant did not provide permission to withhold any amount from the security deposit.

The Landlord testified that they provided a copy of the Condition Inspection Report, along with the post-dated cheques to the Tenant on February 20, 2018 when they conducted the move-out Condition Inspection Report.

The Landlord testified that they put the Tenant's March 2018 rent cheque in the bank and it was returned as non-sufficient funds. They also testified that they did not receive the Tenant's forwarding address on the Condition Inspection Report, but that it was received from the letter sent to them through registered mail on March 21, 2018.

### Analysis

The Landlord and Tenant provided conflicting testimony regarding the date the Tenant's forwarding address was provided in writing. In the absence of the Condition Inspection Report as evidence, it cannot be confirmed that it was provided in writing on the report. However, both parties agreed that the forwarding address was also sent through registered mail on a letter dated March 21, 2018. The Tenant submitted the registered mail tracking number as evidence and the Canada Post website confirms that the Landlord received this package on March 26, 2018. As such, I find that the Landlord was in receipt of the Tenant's forwarding address on this date.

Section 38(1) of the *Residential Tenancy Act* (the *Act*) states that from the later date of the tenancy ending or the forwarding address being provided in writing, a landlord has 15 days to repay the security deposit or file an application claiming against the security deposit. As the Landlord provided testimony that they did not file a claim against the security deposit and did not repay the security deposit, I find that the Landlord did not comply with Section 38(1) of the *Act*.

In accordance with Section 38(6)(b), if a landlord is not in compliance with Section 38(1), they must pay the tenant double the security deposit. As such, I find that the Landlord must pay the Tenant double the security deposit for an amount totalling \$950.00. The security deposit is held in trust for the Tenant by the Landlord and a landlord cannot retain the security deposit because they believe they are justified in keeping it. As the Landlord and the Tenant did not agree to deductions from the security deposit, the Landlord had 15 days from March 26, 2018 to file an Application for Dispute Resolution.

The Tenant has also filed for the return of \$45.00 in banking fees that were incurred from the Landlord not returning the post-dated cheques for the remainder of the fixed term tenancy. Part 5(4) of the Schedule to the *Residential Tenancy Regulation* (the *Regulation*) states that a landlord must return any post-dated cheques to a tenant on or before the last day of the tenancy.

Although the Landlord provided testimony that the cheques were returned to the Tenant on February 20, 2018, the Landlord also testified that they attempted to deposit the March 2018 cheque. The Tenant testified that none of the post-dated rent cheques were returned to him and submitted bank statements showing the stop payments. Due to the conflicting testimony of the Landlord and insufficient evidence to the contrary, I accept the Tenant's testimony that the cheques were not returned in accordance with the *Regulation*, leading to his need to stop payment on the cheques.

As such, in accordance with Section 67 of the *Act*, I award the Tenant compensation in the amount of \$45.00 for the return of bank fees related to stopping payment on the post-dated rent cheques.

The Tenant also filed for the return of \$10.70 which was a cost he incurred from providing his forwarding address to the Landlord by registered mail. I note that the cost of sending a document by registered mail is not a cost that is compensated under the *Act*. As such, I find the Tenant is not entitled to the return of the registered mail costs.

As the Tenant was partially successful in his 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 to the Tenant in the amount outlined below:

#### *Monetary Order Calculations*

Return of security deposit	\$475.00
Amount to double security deposit	\$475.00
Recovery of banking fees	\$45.00
Return of filing fee	\$100.00
<b>Total owing to Tenant</b>	<b>\$1,095.00</b>

#### Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,095.00** for the return of double the security deposit, the cost of

stopping payment on post-dated cheques and for the recovery of the filing fee for this application. 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: June 14, 2018

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Residential Tenancy Branch