



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”) seeking the return of double the amount paid for her security deposit pursuant to section 38(6)(b) of the *Act*.

The hearing was convened by telephone conference call and was attended by Tenant, who provided affirmed testimony. The Landlord did not attend. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenant testified that a copy of the Application and the Notice of Hearing were personally served on an agent for the Landlord at the Landlord’s address for doing business on approximately December 6, 2017. As a result of the above and pursuant to section 89 of the *Act*, I find that the Landlord was deemed served with the Application and the Notice of Hearing on or about December 6, 2017.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in her favor will be e-mailed to her at the e-mail address listed on the Application.

Issue(s) to be Decided

Is the Tenant entitled to compensation equivalent to the amount of double her security deposit pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on December 1, 2016, that rent in the amount of \$950.00 was due on the first day of each month, and that a security deposit in the amount of \$475.00 was paid at the start of the tenancy.

The Tenant testified that the tenancy ended on October 31, 2017, and that she provided her forwarding address to the Landlord in writing on November 7, 2017. The Tenant stated that she participated in both the move-in and move-out condition inspections as required by the *Act* and that no damage was noted at move-out. Despite the foregoing the tenant stated that the Landlord has not filed a claim with the Residential Tenancy Branch (the "Branch") seeking to retain any of her security deposit or returned any of the deposit to her. As a result, the Tenant sought a Monetary Order in the amount of \$950.00.

In support of her testimony, the Tenant provided a copy of the condition inspection report signed by her and the Landlord at the start and end of the tenancy, a Monetary Order Worksheet, and a photograph date stamped November 7, 2017, of a letter to the Landlord containing her forwarding address.

Neither the Landlord nor an agent acting on behalf of the Landlord appeared at the hearing to provide any evidence or testimony for my consideration.

Analysis

Section 38(1) of the *Act* states that except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the Tenant's undisputed testimony that she provided her forwarding address in writing to the Landlord on November 7, 2017. There is no evidence before me that the Tenant extinguished her right to the return of the security deposit or that the Landlord was entitled to retain any amount of the security deposit pursuant to sections 38(3) or 38(4) of the *Act*. As a result, I find that the Landlord had until November 22, 2018, to either file a claim against the security deposit with the Branch, or return the security deposit, in full, to the Tenant.

There is no evidence before me that the Landlord filed an Application with the Branch within 15 days after receiving the Tenant's forwarding address in writing and I accept the Tenant's undisputed testimony that none of her security deposit has been returned to her.

Section 38(6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. Based on the above and the Tenant's undisputed testimony, I therefore find that the Tenant is entitled to a Monetary Order in the amount of \$950.00, which is double the amount of \$475.00 security deposit paid.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$950.00. 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: July 18, 2018

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Residential Tenancy Branch