



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On May 16, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to section 38 of the *Act*.

The Tenant attended the hearing with D.S. and S.S. representing him as his agents. The Landlord did not attend the hearing. All parties provided a solemn affirmation.

D.S. advised that she served the Notice of Hearing package, by registered mail, to the Landlord on May 17, 2018 (the registered mail tracking number is on the first page of this decision). The registered mail tracking history indicated that the Landlord signed for this package on May 23, 2018. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

During the hearing, I confirmed the dispute address with D.S. and with her permission, amended the address to reflect this correction.

I have reviewed all oral and written submissions before me; 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 a return of double his security deposit pursuant to section 38 of the *Act*?

### Background and Evidence

D.S. stated that the tenancy started on March 1, 2018 as a fixed term tenancy for one year; however, the tenancy ended on April 28, 2018. She indicated that the rental unit was a self-contained basement suite. Rent was established at \$800.00 per month, due on the 24<sup>th</sup> day of each month. A security deposit of \$400.00 was also paid.

D.S. submitted that a forwarding address in writing was provided to the Landlord by hand on May 2, 2018. D.S. also stated that the Landlord did not complete move in or move out inspection reports and that the Landlord did not have the Tenant's written consent to keep any portion of the deposit.

### Analysis

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on May 2, 2018. As the Tenant vacated the rental unit on April 28, 2018, I find that May 2, 2018 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full within 15 days of May 2, 2018 or make an application to claim against the deposit.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

There is no provision in the Act which allows the Landlord to retain a portion of the deposit without authority under the Act or having the Tenant's written consent. As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act* and breached the requirements of section 38, I find that the Tenant has established a claim for a Monetary Order amounting to double the original security deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of **\$800.00** in full satisfaction of this claim.

### Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$800.00** 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 6, 2018

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Residential Tenancy Branch