



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNSD

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenant for a monetary order for return of double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act").

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 3, 2017. The tenant had provided tracking information from Canada Post indicating the mail had been signed for on December 12, 2017. I find the landlord has been duly served in accordance with section 89 of the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result 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 for this application from the landlord?

### Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on April 15, 2017 and ended on November 15, 2017. The tenant testified that the tenancy was to be for one year but due to severe anxiety and stress she required to end the tenancy early, which she alleges the landlord agreed to. The tenant was obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The tenant testified that written condition inspection reports was not conducted at move in or move out. The tenant testified that she did not authorize the landlord to retain any of her deposit. The tenant testified that she provided her forwarding address on by text message on November 11, 2017. The tenant is seeking the return of double her deposit of  $500.00 \times 2 = \$1000.00$ . The tenant is also seeking \$1000.00 for lost wages, stress and anxiety of dealing with this landlord. The tenant is also seeking the recovery of the \$100.00 filing fee.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Based on the undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of her deposit, but not the doubling provision under section 38 of the Act. The tenant did not provide sufficient evidence that the landlord was served with her forwarding address in writing prior to her filing this application, accordingly; I find that the tenant is entitled to \$500.00.

The tenant made reference that the tenancy caused her stress and that she seeks \$1000.00 compensation for stress, anxiety and loss of wages. The tenant did not provide a detailed and specific outline of her loss of wages. In addition, the tenant did not provide sufficient evidence of this anxiety while she was living in the unit, only a one page letter from her employer after her tenancy ended. Based on the insufficient evidence before me, I dismiss this portion of her claim.

The tenant is entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The tenant has established a claim for \$600.00. I grant the tenant an order under section 67 for the balance due of \$600.00. This order may be filed in the Small Claims 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 03, 2018

---

Residential Tenancy Branch