



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On June 5, 2018, the Tenant applied for a dispute resolution proceeding seeking a Monetary Order for compensation pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant confirmed that he had served the Landlord the Notice of Hearing package by hand to the Landlord’s wife on June 5 or 6, 2018, and the Landlord confirmed receipt of this package. Based on this testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant did not submit any evidence for this file; however, the Landlord submitted evidence pertaining to the ending of the tenancy and the condition of the rental unit at the end of tenancy. The Landlord advised that he served the Tenant this evidence on July 18, 2018 by hand and the Tenant acknowledged receipt of this evidence. I am satisfied that the evidence has been served in accordance with the Rules of Procedure and thus, all evidence will be considered in this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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*?
- Is the Tenant entitled to recover the filing fee for this Application for Dispute Resolution?

Background and Evidence

The Landlord stated that the tenancy started on June 1, 2014 and the tenancy ended on September 30, 2017 as per a Mutual Agreement to End Tenancy signed by the Tenant's co-tenant spouse. Rent was established at \$1,050.00 per month, due on the 1<sup>st</sup> day of each month. A security deposit of \$500.00 was also paid. The Tenant confirmed these details.

During the hearing, the Tenant advised that he understood that the security deposit paid was \$450.00 and thus, the monetary amount he was seeking at the time of the Application was \$900.00. However, he requested to amend his application to seek \$1,000.00 as the security deposit paid was actually \$500.00. The Landlord acknowledged this request and stated that it made more sense now as he did not understand why the Tenant was asking for \$900.00.

The Tenant submitted that a forwarding address in writing was provided to the Landlord by hand on either October 1 or 2, 2017. The Tenant 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.

The Landlord advised that he was a first-time landlord and that he "missed some things" as he was "unaware of some issues". He confirmed that he received the Tenant's forwarding address in writing on either October 1 or 2, 2017, that he did not complete move-in or move-out inspection reports with the co-tenants, and that he did not have either of the co-tenant's written consent to keep any portion of the deposit. The Landlord also confirmed that he did not return the deposit in full to either of the co-tenants, nor did he make an Application to keep the deposit within 15 days of receiving the Tenant's forwarding address in writing.

### Analysis

With respect to the Tenant's request to amend the Application to \$1,000.00, as both parties were aware and in agreeance to this amount, the Tenant's request was amended to reflect compensation based on the correct balance of the security deposit.

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 October 2, 2017 at the latest. As the Tenant vacated the rental unit on September 30, 2017, I find that October 2, 2017 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 October 2, 2017 or make an application to claim against the deposit.

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 either of the co-tenant's written consent. As the undisputed evidence is that the Landlord illegally withheld 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 **\$1,000.00** in full satisfaction of this claim.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$1,100.00** 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 30, 2018

---

Residential Tenancy Branch