



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT, OT

### Introduction

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

- authorization to obtain a return of double the tenant's security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72, and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed receipt of a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 19, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his 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? Should any other orders be issued with respect to this tenancy?

### Background and Evidence

This tenancy began as a one-year fixed term tenancy for the period from August 1, 2013 until July 31, 2014. According to the terms of the Residential Tenancy Agreement (the Agreement) signed by the parties on June 10, 2013 and entered into written evidence for this hearing, monthly rent was set at \$1,600.00, payable in advance by the first of each month, plus utilities. The landlord continues to hold the tenant's \$800.00 security deposit paid on or about June 10, 2013.

On June 1, 2018, the tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) requiring the tenant to end this tenancy and vacate the premises by August 1, 2018. The parties agreed that the tenant vacated the rental unit on July 31, 2018.

The parties agreed that no joint move-in or joint move-out condition inspection was conducted with respect to this tenancy. The parties also agreed that the landlord did not provide any move-in or move-out inspection reports to the tenant. The parties agreed that the tenant gave the landlord a note containing the tenant's forwarding address to be used for the purposes of returning the tenant's security deposit.

The tenant's application for a monetary award of \$1,600.00 sought the return of double the tenant's security deposit because the tenant gave undisputed sworn testimony and written evidence that the landlord failed to return the security deposit within the 15-day time period established under section 38 of the *Act*. The tenant also asked for the recovery of their filing fee for this application.

Although the landlord did not commence an application for dispute resolution, the landlord submitted written evidence in the form of a Monetary Order Worksheet and receipts totaling \$ 3,223.17. This amount included a request that the tenant's security deposit should be used to offset \$523.17 in unpaid utilities that arose near the end of this tenancy and \$2,700.00 for the replacement of a carpet that was damaged during the course of this tenancy. The tenant did not dispute the landlord's assertion that they did not pay the \$523.17 in utilities, noting that these bills had not been received at the time that this tenancy ended. The tenant did not object to this amount being deducted from the amount of the tenant's monetary award.

### Analysis

Section 38(1) of the *Act* requires a 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 security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, the landlord's right to apply to retain the security deposit had been extinguished because they had not conducted a joint move-in or joint move-out condition inspection or provided the tenant with reports of such inspections. The landlord's responsibilities with respect to joint move-in and joint move-out condition inspections and reports are set out in sections 23, 24, 35 and 36 of the *Act*.

If the landlord fails to comply with section 38(1) of the Act, then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the Act). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after July 31, 2018, to return the tenant's security deposit in full. Section 38(4)(a) of the Act also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of this security deposit, section 38(4)(a) of the Act does not apply to the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*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.*

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the Act owing as a result of the landlord's failure to abide by the provisions of that section of the Act. Under these circumstances and in accordance with section 38(6) of the Act, I find that the tenant is therefore entitled to a monetary order amounting to double the value of the security deposit with interest calculated on the original amount only. No interest is payable.

Having been successful in this application, I find further that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

At the hearing, the tenant testified that the utility bills submitted by the landlord had not been paid and that the tenant was responsible for these bills. For that reason and in accordance with sections 67 and 72 of the *Act*, I reduce the amount of the tenant's monetary award by \$523.17, the amount of these utility bills, as these amounts remain owing at the end of this tenancy.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to obtain the recovery of double the security deposit for this tenancy pursuant to section 38(6) of the *Act* and the filing fee for this application, less the amount of utilities outstanding and owed to the landlord:

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the Act (\$800.00 x 2 = \$1,600.00)	\$1,600.00
Less Outstanding Utilities	-523.17
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,176.83</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 30, 2018

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Residential Tenancy Branch