



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BIRCHVIEW MANOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

**FFT MNSD**

### Introduction

This hearing dealt with an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38; and
- Reimbursement of the filing fee under section 72.

The tenant attended with a representative AS (“the tenant”). The landlord attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. No issues of service were raised. I find the landlord was served pursuant to section 89.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because of the landlord’s failure to comply with the provisions of section 38 of the *Act*?
- Is the tenant entitled to reimbursement of the filing fee under section 72?

### Background and Evidence

The tenant testified the parties entered into a tenancy agreement starting June 1, 2016 and ending when the tenant vacated on September 30, 2016. Monthly rent was \$675.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$337.50.

The parties agreed the tenant provided the landlord his forwarding address in writing by letter dated August 15, 2017.

The tenant testified he has not authorized the landlord to retain any amount from the security deposit.

The parties agree the landlord sent the tenant a cheque for \$100.00 dated August 30, 2017 which has not been cashed by the tenant and which is now stale dated. The landlord testified he deducted the balance of the security deposit for cleaning of the unit and taking to the dump a sofa that the tenant left behind.

The landlord stated he did not bring an application for dispute resolution.

### Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlords are required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

*38 (1) 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.*

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit under section 38.

Section 38(6) states as follows:

*(6) 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*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided his forwarding address in writing pursuant to section 38(1)(b) and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

As the tenant is successful in this application, he is entitled to reimbursement of the filing fee pursuant to section 72.

As the \$100.00 cheque as partial return to the tenant of the security deposit is now stale dated, the payment is not deducted from the award.

The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$337.50
Double the Security Deposit	\$337.50
Reimbursement of the filing fee	\$100.00
<b>Monetary Award Tenant</b>	<b>\$775.00</b>

The landlord submitted testimony about the condition of the rental unit needing repair after the end of the tenancy and wanting to be reimbursed for a fee for transporting the tenant's furniture to the dump.

The landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

### ***2.1 Starting an Application for Dispute Resolution***

*To make a claim, a person must complete and submit an Application for Dispute Resolution.*

Therefore, the landlord must file his own application to keep the deposit within the 15 days of certain events, as explained above.

The landlord may still file an application for alleged damages.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

### Conclusion

I order the landlord pay to the tenant the sum of **\$775.00** pursuant to sections 38 and 72 of the *Act*.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: October 15, 2018

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Residential Tenancy Branch