



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDSD (tenant); MNDCL-S FFL (landlord)

### 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.

This hearing also dealt with an application by the landlord under the *Act* for the following:

- A monetary order for outstanding rent and damages as compensation under section 67;
- Authorization to apply the security deposit to the monetary order under section 72; and
- Reimbursement of the filing fee under section 72.

The tenant attended as well as the landlord SS on behalf of both landlords ("the landlord"). 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 tenant's Notice of Hearing and Application for Dispute Resolution. I find the tenant served the landlord pursuant to section 89 of the *Act*.

*Preliminary Issue – Service*

The tenant testified she had received notification from the RTB that the landlord filed a cross-application scheduled for hearing at this time. However, the tenant stated she had not received the landlord's documents. The landlord testified she did not send the documents to the tenant but only submitted them to the RTB.

Section 89 of the *Act* sets out how an applicant must serve a respondent with an application for dispute resolution.

The landlord submitted no evidence or documents to support a finding the landlord had served the tenant with the landlord's Notice of Hearing and Application for Dispute Resolution as required by Section 89 of the *Act*,

Therefore, I find the landlord has failed to prove service as required and the landlord's application is dismissed with leave to reapply.

#### 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*?

#### Background and Evidence

The tenant provided testimony as follows. The parties entered into a residential tenancy agreement starting on March 1, 2016 which ended when the tenant vacated on June 30, 2018. The tenant paid monthly rent of \$850.00 on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$450.00 which the landlord held. The tenant has not provided authorization to the landlord to retain any portion of the security deposit.

The tenant provided a forwarding address to the landlord by registered mail sent on July 27, 2018. Pursuant to section 90, the landlord is deemed to have received the forwarding address on the fifth day after mailing, that is, on August 1, 2018. The landlord acknowledged receipt.

The parties agreed the landlord had served the tenant with a Two Month Notice to End Tenancy with an effective vacancy date of June 30, 2018 as the landlord intended to demolish the building.

The landlord claimed the tenant had not vacated on June 30, 2018 but stayed an extra five days. The landlord initially claimed \$850.00 for one month's rent, but during the hearing, she clarified that her claim was for overholding for five days.

The landlord claimed the tenant left garbage and furniture behind as a result of which the landlord incurred expenses.

The parties did not conduct a condition inspection on moving in or moving out.

The landlord brought an application for dispute resolution on August 27, 2018.

### 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 landlord must 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 tenant provided the tenant's forwarding address in writing pursuant to sections 38(1)(b) and 90 on August 2, 2018. I find the tenant did not provide consent to the landlord to keep any portion of the security deposit to section 38(4)(a). I find the landlord did not bring an application within the time limits of section 38(1).

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.

I therefore award the tenant a monetary order in the amount of \$850.00 being a doubling of the security deposit.

The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$425.00
Double the Security Deposit	\$425.00
<b>Monetary Award Tenant</b>	<b>\$850.00</b>

The landlord submitted testimony about the condition of the rental unit needing cleaning after the end of the tenancy and wanting to be reimbursed for removing the tenant's furniture.

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 the landlord's own application to keep the deposit within the 15 days of certain events, as explained above.

I have dismissed the landlord's present application with leave to reapply. 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

The landlord's application is dismissed with leave to reapply.

I order the landlord pay to the tenant the sum of **\$850.00** pursuant to sections 38 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.

I make this decision on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 03, 2019

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Residential Tenancy Branch