



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence. The landlord stated that she did not serve any of her evidence to the tenant. The tenant provided affirmed testimony that the notice of hearing package was served to the landlord via Canada Post Registered Mail on October 2, 2018 and has provided a copy of the Canada Post Customer Receipt Tracking label as confirmation. I accept the undisputed evidence of both parties and find that the landlord was properly served as per sections 88 and 89 of the Act. I find as the landlord failed to serve the tenant with the submitted documentary evidence that this evidence submission is excluded from consideration in this decision.

### Preliminary Issue(s)

During the hearing the tenant's requested reimbursement of mailing costs was addressed. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Although the tenant requested recovery of these costs, no order is required as no application was made.

At the end of the hearing the landlord corrected the mailing address provided to 34587, the listed dispute address for receiving mail.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### Background and Evidence

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

This tenancy began on November 1, 2017 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 23, 2017. The monthly rent was \$1,700.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$850.00 was paid on November 1, 2017.

The tenant seeks a monetary claim of \$850.00 for return of the original security deposit and if successful recovery of the \$100.00 filing fee.

The landlord confirmed in her direct testimony that she has withheld the \$850.00 security deposit due to a dispute over damages in the rental premises.

Both parties confirmed in their direct testimony that the tenancy ended on August 31, 2018. The tenant stated that the landlord was served with the tenant's forwarding address in writing in a letter on September 1, 2018. The landlord stated at first that this was received on October 1, 2018, but later clarified that she does not know when.

The landlord was asked if she had the consent of the tenant to retain the security deposit for which she answered "no". The landlord was asked if she had authorization from the Residential Tenancy Branch to keep all or part of the security deposit for which she answered, "no".

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the

security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed evidence of both parties and find that the landlord failed to return the \$850.00 security deposit within the allowed 15 day period following the end of tenancy on August 31, 2018 or when she received the tenant's forwarding address in writing on September 1, 2018. As such, the tenant has been successful in establishing a claim for the original \$850.00 security deposit.

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

Section 38 (6), the landlord failed to comply with Act and is liable to an amount equal to the \$850.00 security deposit. The landlord did not return the security deposit within the allowed 15 day period nor did the landlord file an application disputing its return.

### Conclusion

The tenant is granted a monetary order for \$1,800.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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: January 25, 2019

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Residential Tenancy Branch