



# 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 an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order to recover a deduction off the security deposit without the tenant's consent, for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the tenant entitled to the return of double the security deposit and the filing fee?

### **Background and Evidence**

The parties agreed that the tenancy started in November 2016, ended on May 31, 01, 2018 and that the landlord was provided with a forwarding address on May 24, 2018. Prior to moving in the tenant paid a security deposit of \$625.00.

The tenant stated that she had not received the security deposit from the landlord by July 10, 2018 and sent him a reminder by email. The landlord informed the tenant that the deposit had been returned by a cheque dated June 01, 2018 to the forwarding address provided by the tenant. The tenant requested the landlord to cancel the cheque and resend the security deposit by a second cheque.

Copies of the correspondence by email between the parties was filed into evidence. The landlord stated that he cancelled the cheque at the tenant's request and mailed out a second cheque which was received by the tenant on July 20, 2018. The tenant stated that the landlord sent her a cheque for \$607.00 instead of the full amount of \$625.00 and she questioned the deduction. The landlord informed her that the deduction was for the bank fee to cancel the cheque.

On September 30, 2018 the tenant made this application for the return of double the deposit plus the amount of the deduction.

### **Analysis**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

The parties agreed that the tenancy ended on May 31, 2018 and that the landlord was provided with a forwarding address on May 24, 2018. I now must determine whether the landlord returned the deposit within the legislated time frame of 15 days.

Based on the documents filed into evidence by the landlord, I find that the landlord wrote a cheque for the return of the full deposit on June 01, 2018. A copy of the cheque stub was filed into evidence. The landlord also filed a copy of his bank statement showing that the bank had charged him a fee of \$25.00 to cancel a cheque.

The landlord testified that the cheque was mailed to the tenant on June 03, 2018 but did not file any documentary evidence to support his testimony.

Based on a balance of probabilities, I find that is more likely than not that the landlord mailed the tenant a cheque for the full amount of the deposit on June 03, 2018 to the address provided by the tenant. I also find that the landlord cannot be held responsible for the loss of the cheque and accordingly should not be penalized for something that was out of his control. The landlord also mailed the second cheque within 15 days of being informed that the tenant had not received the deposit.

However, the landlord made a deduction without the consent of the tenant. The landlord testified that the deduction was made to cover the cost of cancellation of the first cheque that was requested by the tenant.

Based on the above findings. I have determined that the landlord mailed the initial cheque for the return of the full amount of the security deposit, within the 15 day timeframe and mailed a second cheque to the tenant as soon as he found out that the tenant had not received the first one. Therefore, I find that the tenant is not entitled to the return of double the deposit.

Even though the landlord incurred a cost to carry out the tenant's request to cancel the cheque, I find that that the landlord must bear this cost as part of doing business as a landlord. The tenant was forced to file this application due to an unauthorized deduction off the deposit and therefore I find that the tenant is entitled to the recovery of the filing fee.

The tenant has established a monetary claim of \$118.00 which consists of the unauthorized deduction of \$18.00 plus the filing fee of \$100.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$118.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$118.00**.

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 28, 2019

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Residential Tenancy Branch