



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRT, FFT, MNSD

### Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

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. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue 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 a monetary order as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on June 30, 2014 and ended on July 31, 2018. The tenant was obligated to pay \$700.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$350.00 security deposit.

The tenant testified that a written condition inspection report was neither conducted at move in or move out. The tenant testified that he provided his forwarding address by registered mail on July 31, 2018 and again on August 6, 2018. The tenant is seeking the return of double his deposits plus the filing fee of \$100.00 along with \$469.73 for some parts and minor repairs he was required to do to upkeep the suite as the landlord "didn't spend a dime on the place while I was there".

The landlord gave the following testimony. The landlord testified that the tenant left the suite with some damage and that she will be pursuing her own application as a result. The landlord testified that she was unaware of these costs that the tenant claims for repairs until this hearing.

### Analysis

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

#### Parts and Repairs- \$469.73

The tenant did not provide sufficient evidence that he mitigated these costs by informing the landlord or any attempts to inform the landlord, in fact the landlord was unaware of these claims that date back several years until she was served notice of this hearing. Based on the insufficient evidence before me, I dismiss this portion of the tenants' application.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

Based on the testimony of the tenant, the documentary evidence before me, and that the landlord confirmed that she did not file an application to date, has not returned the deposit and does not have the tenants permission to retain it, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits in the amount of \$700.00.

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

### Conclusion

The tenant has established a claim for \$800.00. I grant the tenant an order under section 67 for the balance due of \$800.00. This order may be filed in the Small Claims 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 31, 2019

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Residential Tenancy Branch