



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### 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 the hearing and provided affirmed testimony. The tenant had the opportunity to make submissions as well as present oral and written evidence. The landlord did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional twenty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code for the landlord had been provided.

The tenant testified he served the landlord with the Notice of Hearing and evidentiary materials by registered mail on October 20, 2018. He provided the Canada Post tracking number in support of service referenced on the first page of this decision. Further to sections 89 and 90 of the *Act*, I find the landlord was served on the 5<sup>th</sup> day after mailing, being October 20, 2018.

### 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 of the *Act*?

### Background and Evidence

The tenant provided affirmed and uncontradicted testimony as follows. The parties entered into a residential tenancy agreement starting September 1, 2015 and ending on September 30, 2018. Rent was \$2,350.00 monthly payable at the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$1,150.00 to the landlord. The landlord holds the security deposit. The tenant did not authorize the landlord to retain any of the security deposit.

The tenant provided a forwarding address in writing to the landlord by letter of September 5, 2018. The tenant provided a copy of the letter as well as the Canada Post tracking number referenced on the first page of this decision.

The parties conducted a condition inspection on moving in and moving out. The tenant did not submit a copy of the condition inspection reports.

The landlord has not returned the security deposit or applied for dispute resolution.

### Analysis

I have reviewed all evidence and testimony before me and will refer only to 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 is 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.

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) on September 10, 2018, five days after mailing, pursuant to section 90 of the *Act*, 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 was successful in this application, I award the tenant reimbursement of the filing fee of \$100.00 pursuant to section 72.

I award the tenant a monetary order in the amount of \$2,400.00. The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$1,150.00
Double the Security Deposit	\$1,150.00
Reimbursement of the filing fee	\$100.00
<b>Monetary Award Tenant</b>	<b>\$2,400.00</b>

### Conclusion

I order the landlord pay to the tenant the sum of **\$2,400.00** 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: February 11, 2019

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Residential Tenancy Branch