



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### 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 the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agent.

The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimony I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they sent the tenant their evidentiary materials by registered mail on February 1, 2019. The landlord provided a Canada Post tracking number and confirmed that the evidence was mailed to the correct forwarding address provided by the tenant. The tenant disputed receiving the evidence. While the tenant disputes being served, I find that the documentary evidence of registered mail show that the landlord mailed the materials to the correct address on February 1, 2019. Accordingly, I find that the tenant was deemed served with the landlord's evidence on February 6, 2019, five days after mailing, in accordance with sections 88 and 90 of the *Act*.

### Issue(s) 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*?

### Background and Evidence

The tenant testified that the security deposit for this periodic tenancy is \$525.00, half of the monthly rent of \$1,050.00. The tenancy began in May, 2018 and ended on September 1, 2018. The tenant provided a forwarding address by a letter hand-delivered to the landlord on September 3, 2018. A copy of the letter was submitted into evidence. The tenant said that there was no condition inspection report prepared at any time for this tenancy. The tenant testified that they have not given written authorization that the landlord may retain any portion of the security deposit and as of the date of the hearing have not received a return of the deposit for this tenancy.

The landlord testified that the actual amount of security deposit paid for this tenancy is actually \$425.00. The tenancy agreement submitted into evidence by the tenant indicates that the security deposit for this tenancy is \$450.00. The landlord confirmed that they have not returned any amount of the deposit as the tenant caused damage to the suite and there was a rental arrear. The landlord confirmed that no condition inspection report was prepared for this tenancy.

### Analysis

Residential Tenancy Procedure Rule of Procedure 6.6 provides that the onus is on the person making the claim to prove their claim on a balance of probabilities. While the parties agree that a security deposit was paid, the parties do not agree on the amount of the deposit paid for this tenancy. Each party submits that a different amount was paid. I note that the documentary evidence by way of a tenancy agreement provides a third, different amount.

Taken in its entirety, I find the tenant's testimony that the security deposit paid for this tenancy is \$525.00 to be most credible. The amount submitted by the tenant is half of the monthly rent of \$1,050.00, the amount that would have been payable under the *Act*. I find the landlord's suggestion that the amount paid was \$425.00 to not be supported in the evidence. I further find that the amount of \$450.00 provided in the signed tenancy

agreement to be a figure that does not correspond to the monthly rent payable under the agreement. While there may have been valid reasons for a lesser amount of security deposit to be established, neither party suggested that the \$450.00 was the correct amount. Based on the evidence I accept the tenant's submission that the security deposit paid for this tenancy was \$525.00.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the deposits as per section 38(4)(a).

I accept the undisputed evidence of the tenant that this tenancy ended on September 1, 2018 and that a forwarding address was provided in writing by a letter dated September 3, 2018. I accept the tenant's testimony that the letter was personally handed to the landlord on September 3, 2018.

I accept the undisputed evidence that the landlord has not returned the security deposit in full nor have they filed an application to retain the deposit.

While the landlord testified that the tenant caused damage to the rental suite and there was a rental arrear, I find that this is irrelevant to the issue of the return of the security deposit. A landlord cannot unilaterally choose to retain a deposit for a tenancy without taking the appropriate measures required under the *Act*.

A landlord is in the business of taking money for rent and ought to be aware of their requirements under the *Act*. If the landlord believed that they had suffered damages or a loss of rental income they should have filed for authorization to retain the deposit. The landlord did not file an application but simply chose to hold the security deposit without following the proper procedures.

Furthermore, the tenant testified that the landlord did not participate in a condition inspection and no report was prepared by the landlord at any time for this tenancy. Pursuant to section 24 of the *Act*, a landlord who fails to prepare a condition inspection

report in accordance with section 23 extinguishes their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days from September 3, 2018. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,050.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,050.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 15, 2019

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Residential Tenancy Branch