



# 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 the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenant applied for the return of his security deposit, and to recover the filing fee. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of his security deposit?
- Is the Tenant entitled to recover the filing fee for this application?

### Background and Evidence

Both parties agreed that the tenancy began on November 1, 2018. Rent in the amount of \$788.12 was to be paid by the first day of each month, and that the Tenant paid the Landlord a \$320.00 security deposit. It was also agreed that the Tenant moved out of the rental unit on September 1, 2018.

Both parties agreed that the Tenant provided the Landlord with his forwarding address before he moved out on September 1, 2018, and that at no time had the Landlord been given written permission to keep the deposit.

The parties also agreed that the Landlord had sent a check to the Tenant, returning \$110.68 of the Tenant's \$382.50 security deposit by mail on September 12, 2018. Both parties agreed that the Tenant had not cashed the cheque and that the cheque was now stale dated.

The Landlord testified that she had not returned the full deposits to the Tenant, as she had deducted her costs to have the rental unit painted and cleaned at the end of the tenancy. The Landlord also testified that she had informed the Tenant of the reasons why she would be keeping a portion of the deposits. The Landlord testified that as of the date of this hearing she had not filed an Application for Dispute Resolution claiming against the deposit.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

### **Return of security deposit and pet damage deposit**

**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.

I accept the agreed upon testimony of these parties that this tenancy ended on September 1, 2018, the date the Tenant moved out of the rental unit and provided the Landlord with his forwarding address. I also accept that the Landlord had attempted to return \$110.68 of the \$382.50 security deposit to the Tenant on September 12, 2018, with a note detailing why she was retaining a portion of the Tenant's security deposit.

Accordingly, I find that the Landlord had until September 16, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the portion of the security deposit she wished to retain. However, the Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposits in full or filing a claim against the portion of the deposits the Landlord wished to keep, within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

### **Return of security deposit and pet damage deposit**

- 38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that his entitlement to the return of double his security deposit. I find for the Tenant, granting a monetary order for the return of double the security deposit, in the amount of **\$640.00**.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has have been successful in her application, I find that the Tenant is entitled to recover the **\$100.00** filing fee paid for this application.

### Conclusion

I find that the Landlord breached section 38 of the *Act* when she failed to repay in full or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$740.00**. The Tenant is provided with this 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 25, 2019

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Residential Tenancy Branch