



# 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 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; 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. The landlord was represented by his son, who acted as his agent.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her 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 recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on September 1, 2016 and ended on September 30, 2018. The tenant was obligated to pay \$3600.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$1800.00 security deposit. The tenant testified that written condition inspection reports was not conducted at move in or move out. The tenant testified that she agreed to cover the costs of

lightbulbs and some yard work in the amount of \$602.03 and was content to have that deducted from her deposit. The tenant testified that the landlord advised her that she was not going to get her deposit and asked for an additional \$209.20 for those costs. The tenant testified that she did not agree to the inflated and exorbitant costs. The tenant testified that she is seeking the return of double her deposit minus the \$602.03 as agreed to. The tenant also seeks the recovery of the filing fee.

The landlords' agent gave the following testimony. The agent testified that the tenant did not leave the home in a suitable condition. The agent testified that the costs to return the home to a rentable condition exceeded the deposit. The agent testified that he received the tenants forwarding address by registered mail on October 10, 2018. The agent testified that section 38 of the Act is unfair and that the landlord was justified in retaining the deposit.

### 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.

The tenant said she 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.**

The landlords' agent confirmed and acknowledged that the landlord had not returned the deposit or filed an application to retain the deposit within fifteen days of receiving the tenants forwarding in writing, accordingly; I find that the landlord did not comply with section 38 of the Act and that the tenant is entitled to the return of double the deposit.

It is worth noting, that the tenant did not agree in writing to any deductions, but stated during the hearing that she felt it was fair that the amount discussed between her and the landlord should be deducted from any award she received.

The tenant is entitled to double the deposit  $\$1800.00 \times 2 = \$3600.00$  minus the  $\$602.03$  she had agreed to pay for miscellaneous items  $= \$2997.97$ .

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

### Conclusion

The tenant has established a claim for  $\$3097.97$ . I grant the tenant an order under section 67 for the balance due of  $\$3097.97$ . 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: March 15, 2019

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Residential Tenancy Branch