



# Dispute Resolution Services

Page: 1

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;
- 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 ten minutes to allow the landlord the opportunity to call. Only the tenant and I participated in the hearing. I confirmed the correct participation code had been provided to the landlord.

The tenant testified she served the landlord with the Notice of Hearing and evidentiary materials by registered mail on December 5, 2018 at the address provided by the landlord in the tenancy agreement, a copy of which the tenant submitted as evidence. The tenant 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 December 10, 2018.

The tenant stated the registered mail letter was returned to her unclaimed. The tenant testified that on January 21, 2019, the tenant sent the Notice of Hearing and evidentiary materials to the landlord at the email address provided by the landlord in the tenancy agreement; the tenant testified the parties routinely corresponded by email and she submitted copies of emails between the parties as evidence in this regard.

#### 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 testified the parties entered into a tenancy agreement commencing July 15, 2017 and ending when the tenant vacated on July 30, 2018. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$1,100.00 and a pet deposit in the amount of \$1,100.00, together being \$2,200.00 and referred to herein as "the deposits". The tenant submitted a copy of the tenancy agreement as evidence.

The tenant could not recall if the parties had conducted an inspection on moving in. On the last day of the tenancy, the tenant testified that the parties met and conducted an inspection of the unit; the landlord determined there were no issues concerning damage or cleanliness and communicated this to the tenant. The tenant testified the parties completed a condition inspection report on the standard RTB form; the tenant wrote her forwarding address in the report. The landlord said he would scan it and send a copy to the tenant. The landlord also said he would return the deposits to the tenant right away by bank transfer.

The tenant has never received a copy of the condition inspect report on moving out or the return of the deposits. The landlord continued to hold the deposits.

The tenant testified she routinely communicated with the landlord at the email address he provided in the tenancy agreement; this is the email address to which she sent a copy of the Notice of Hearing and evidentiary materials as discussed earlier.

The tenant submitted as evidence an exchange of emails between the parties including an email dated November 21, 2018 in which she requested the return of the deposits and again informed the landlord of her forwarding address for the return of the deposits. The landlord acknowledged receipt of the tenant's email. He replied that he had been travelling and "would look into it".

On November 22, 2018, the tenant testified the landlord transferred \$2,200.00 to her by bank transfer; however, before she could accept the transfer, the landlord cancelled it and the tenant received nothing.

The tenant testified the landlord has not filed an application for dispute resolution.

The tenant claimed a monetary award in the amount of \$4,400.00, being double the amount of the deposits (\$2,200.00 x 2) and reimbursement of the cost of the filing fee, \$100.00, for a total monetary claim of \$4,500.00.

### 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 her forwarding address in writing pursuant to section 38(1)(b) on July 31, 2018, the last day of the tenancy and again by email at the landlord's address on November 21, 2018. I find the tenant did not provide consent to the landlord to keep any portion of the deposits 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 **\$4,500.00**. The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$2,200.00
Double the Security Deposit	\$2,200.00
Reimbursement of the filing fee	\$100.00
<b>Monetary Award Tenant</b>	<b>\$4,500.00</b>

### Conclusion

I order the landlord pay to the tenant the sum of **\$4,500.00** 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: March 26, 2019

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Residential Tenancy Branch