



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for part or all of his security deposit back, and to recover the cost of his filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony, but no one appeared on behalf of the Landlord. I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process.

During the hearing the Tenant was given the opportunity to provide his evidence orally, including commenting on the documentary evidence he submitted. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses at the outset of the hearing and confirmed his understanding that the decision would be emailed to both Parties. I note the Landlord's email address provided by the Tenant is the same as is written in the tenancy agreement.

In the hearing, the Tenant said that he sent his Application and documentary evidence to the Landlord via registered mail to the address provided by the Landlord as her address for service in the tenancy agreement. The Tenant provided a Canada Post tracking number for this mailing. I checked the tracking number and it indicated that the package mailed on January 21, 2019. Pursuant to section 90 of the Act, I find that the package was deemed served on January 26, 2019.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the Tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The Tenant said that the fixed term tenancy started on June 1, 2016, and had a monthly rent of \$1,550.00, due on the first day of each month. The Tenant said it turned into a periodic tenancy when the fixed term ended a year later. The Tenant said he paid a security deposit of \$775.00 and no pet damage deposit. He said the rent was \$1,570.00 at the end of the tenancy.

In a written statement, the Tenant said that on May 28, 2016, he met the Landlord to conduct a move-in condition inspection of the rental unit and that he signed the condition inspection report; however, the Tenant said the Landlord never forwarded him a copy of it.

The Tenant said he ended the tenancy by giving the Landlord one month's notice to end the tenancy, which he said he served on her in person on November 30, 2018 (the "Notice"). The Notice indicated that the last day of the tenancy was December 31, 2018.

The Tenant submitted a copy of the Notice, in which he gave his forwarding address and asked for the return of his security deposit within 15 days of the tenancy ending. In the Notice, the Tenant said the Landlord could mail or etransfer the security deposit back to him.

In his Application, the Tenant said that he again gave the Landlord his forwarding address on December 31, 2018; however, as the Landlord failed to return all of the security deposit, the Tenant applied for an order for the return of double the security deposit, pursuant to section 38(6)(b) of the *Act*.

The Tenant submitted an email exchange dated December 30, 2018, between himself and the Landlord, in which he said:

From Tenant to Landlord:

Hi [Landlord],

Please confirm if Wednesday January 2<sup>nd</sup> at 11am works for the final inspection. This is now the 3<sup>rd</sup> time I have requested that you confirm this date and time or propose another date and time that works for you.

[Tenant]

From Landlord to Tenant:

Yes, that will work, [Tenant]. I'll see you then.

I think you gave me your new address, but I can't find it and will need to for the remainder of your deposit.

Thanks,

[Landlord]

In his written submission, the Tenant said the Landlord's email indicates her intention to retain a portion of the security deposit, even before conducting the move-out condition inspection.

In the hearing, the Tenant said:

The Reason why I'm applying is because the Landlord did not provide me with my security deposit back within the time frame of the Act. She was planning to withhold money from the security deposit, which I did not agree with. As soon as I said I did not agree with her estimate of the damage, she became angry and ended the condition inspection. She did not have a condition inspection report with her for the inspection and did not provide one to support her allegations about damage.

She sent me a cheque after I started the arbitration process and it was for a fraction of the amount owing. She decided she was going to arbitrarily take off an amount for damages.

The Tenant submitted a letter from a witness with whom he said he attended the move-out inspection, and which I read. I find that this witness confirmed what the Tenant said occurred with the Landlord at the move-out inspection. I find this gives reliability to the Tenant's version of events in this regard.

The Tenant submitted photographs of a cheque he said he received from the Landlord for \$673.88, and the envelope that he said contained the cheque with a post mark dated January 22, 2019.

The Tenant said he retained, but did not cash the cheque. He said the envelope also contained a handwritten note from the Landlord stating:

EXPENSES:

- water Nov 9 – Jan 4 \$171.12 -- 56 days @ 1.26/day
- heat to dry carpet 2 days on high \$20.00
- rent to Jan.15 (premises vac. On 2<sup>nd</sup>, carpet wet to 4<sup>th</sup>). Unable to show suite in Dec. due to [a person's name] illness. One entrance allowed in Dec. to renovator to assess damage.

½ mo. Rent 785.00

\$876.24

Deposit

\$1,550.00

876.24

\$ 673.88

[duplicated per original]

Analysis

Based on the evidence before me overall, I find that the Tenant provided his forwarding address to the Landlord on November 30, 2018, and the tenancy ended on January 2, 2019. Section 38(1) of the Act addresses the parties' obligations regarding the security deposit at the end of a tenancy, stating the following:

**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.

The Landlord was required to return the \$775.00 security deposit within fifteen days after January 2, 2019, namely by January 17, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to Section 38(1)(d). There is no evidence before me that the Landlord applied for dispute resolution. Further, I find that the Landlord mailed the Tenant a cheque after January 17, 2019. I find this mailing contained a partial payment of the Tenant's security deposit, and a handwritten note that I find does not explain the Landlord's calculations or how her actions are consistent with her requirements as a landlord under the Act.

I find the Landlord failed to comply with her obligations under Section 38 of the Act. Accordingly, I find the Landlord must pay the Tenant double the amount of the security deposit pursuant to section 38(6)(b) of the Act. There is no interest payable on the security deposit.

I grant the Tenant a monetary award of double the security deposit of \$775.00 for a total amount of **\$1,550.00**. I also grant the Tenant recovery of his **\$100.00** filing fee in this matter.

### Conclusion

The Tenant's claim for the return of double the damage deposit against the Landlord is successful.

The Tenant has established a monetary claim against the Landlord of **\$1,650.00**. I authorize the Tenant to cash the Landlord's partial payment of the security deposit cheque in the amount of \$673.88, in partial satisfaction of the claim. I grant the Tenant a monetary order under section 67 for the balance due by the Landlord to the Tenant in the amount of **\$976.12**.

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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*.

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: April 21, 2019

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Residential Tenancy Branch