



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, 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 double the amount of the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 16 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord said that she did not serve her written evidence package to the tenant. The tenant said that she did not receive any evidence from the landlord. I notified both parties that I could not consider the landlord's evidence at the hearing or in my decision because the landlord did not serve it to the tenant, as required.

During the hearing, the tenant confirmed that she was only pursuing an application for double her security deposit and her filing fee, no other monetary application. Therefore, the tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

### Issues 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?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2015 and ended on December 17, 2016. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 and a pet damage deposit of \$1.00 were paid by the tenant. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was not completed. The tenant sent a written forwarding address by email to the landlord on January 11, 2017. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

Both parties agreed that the landlord sent an e-transfer to the tenant for \$100.00 for the return of a portion of her security deposit. The tenant said that she did not accept it and it expired. The tenant provided email proof of same. The landlord said that she did not know if the tenant accepted the money because she had not checked.

The tenant claimed that she sent a written forwarding address by way of a letter sent by registered mail on February 6, 2017 and signed for by the landlord on February 23, 2017. The tenant provided the Canada Post tracking number and printout with her application. The landlord said that she may have received it, but she could not recall because it was so long ago.

The tenant seeks a return of double the amount of her security deposit of \$625.00, totalling \$1,250.00, plus the \$100.00 application filing fee. She said that she did not want a return of her \$1.00 pet damage deposit. The landlord disputes the tenant's claim for \$1,350.00. The landlord stated that she made deductions from the tenant's security deposit because she had to help the tenant move and clean up the rental unit.

### Analysis

The tenant's application was filed on December 14, 2018, which is within two years from the end of the tenancy on December 17, 2016. Therefore, I find that I have jurisdiction to hear the tenant's application as it was made within the time limit.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended on December 17, 2016. The tenant provided a written forwarding address by way of a letter, which was deemed received by the landlord by registered mail on February 11, 2017, five days after the registered mailing on February 6, 2017, as per section 90 of the *Act*.

The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the full deposit or make an application for dispute resolution to claim against the deposit. Even though the landlord sent a partial return of \$100.00 to the tenant by e-transfer, it was not the full amount and it was not accepted by the tenant. The tenant provided proof of same. The landlord's right to claim against the deposit for damages was extinguished for failure to conduct a move-out condition inspection report, as required by section 36 of the *Act*.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security damage deposit of \$625.00, totalling \$1,250.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,350.00 against the landlord. 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.

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

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 05, 2019

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Residential Tenancy Branch