



# 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 a monetary order granting him the return of double the security deposit, and to recover the cost of his filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony, but the Landlord did not attend or have a representative attend on his behalf. 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 and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); 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 his email address at the outset of the hearing and confirmed his understanding that the decision would be emailed him and mailed to the Landlord.

The Landlord did not attend the hearing, so I confirmed with the Tenant that he served his Application, Amendment and documentary evidence on the Landlord. The Tenant said he did this via registered mail on December 21, 2018. He provided a tracking number for this package, which indicated that the registered mail package was delivered on December 27, 2018. I am satisfied that the Landlord was served with the Tenant's Application and documentary evidence. I note that the Amendment was received by the RTB on December 27, 2018; however, it was dated December 20, 2018. I find it is more likely than not that the Amendment was included in the original package served on the Landlord on December 27, 2018.

The teleconference hearing continued for 14 minutes and the telephone line monitored throughout, but the Landlord did not call in.

Issue(s) to be Decided

- Is the Tenant entitled to the return of the security deposit, and if so, in what amount?
- Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant submitted a copy of the tenancy agreement and confirmed that the month-to-month tenancy began on October 1, 2017, with a monthly rent of \$1,300.00 due on the first day of each month. The Tenant said that he paid a security deposit of \$675.00, as set out in the tenancy agreement, and no pet damage deposit. He said he has since learned that he was only required to pay a security deposit of half the amount of the rent; however, the Landlord required him to pay \$25.00 more than is required by the Act.

The Tenant said that the Parties did not do a move-in or move-out condition inspection of the rental unit. There is no condition inspection report ("CIR") in the evidence before me. In the hearing, the Tenant said:

We did an initial walk-through, but [the Landlord] didn't give me a condition inspection report; we didn't do a move out walk-through. I texted him a couple times to do the move-out inspection. He asked me to come the next day. When I called him, he said 'you will have to do professional cleaning', and he said 'don't contact me ever again', but we didn't do an inspection.

Basically, he is keeping my money without my permission. He said it was not clean. It is in very good shape, no scratches, no marks, nothing, He insists that to bring in new tenants he will have to do professional cleaning in the bathroom, even though it is clean. He said I need to get professional cleaning done. I don't think I should, because it is clean. I gave his wife the keys.

There is no evidence before me that the Landlord applied for dispute resolution at the RTB for an order to keep any part of the Tenant's security deposit.

In the hearing, the Tenant said he "printed off a sheet with the forwarding address on it

and gave it to [the Landlord's] wife on October 27, 2018. I moved out on November 30, 2018."

The Tenant said he seeks double the security deposit back from the Landlord, pursuant to section 38(6)(b).

### Analysis

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in their absence. As noted above, no one attended the hearing for the Landlord, and I found that he was served with the Tenant's Application, Amendment, and documentary evidence. Accordingly, pursuant with Rule 7.3, the hearing proceeded in the Landlord's absence.

Section 38(1) of the Act states the following about security and pet damage deposits:

- 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 \$675.00 security deposit fifteen days after November 30, 2018, namely by December 15, 2018, or apply for dispute resolution, claiming against the security deposit, pursuant to Section 38(1). There is no evidence before me that the Landlord returned any amount of the security deposit or applied for dispute resolution in this matter. Therefore, I find the Landlord has failed to comply with his obligations under Section 38(1).

Section 38(6) of the Act states:

- 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.

Since the Landlord failed to comply with the requirements of section 38(1), and as per Section 38(6)(b) I find the Landlord must pay the Tenant double the amount of the security deposit for a total of \$1,350.00. There is no interest payable on the security deposit.

The Tenant was successful in his Application, so I also award him recovery of the filing fee of \$100.00.

### Conclusion

The Landlord did not return the Tenant's security deposit within 15 days of the later of the end of the tenancy and his receipt of the Tenant's forwarding address. Further, the Landlord did not apply for dispute resolution, claiming against the security deposit. As a result, I award the Tenant with double the return of his \$675.00 security deposit, plus recovery of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I award the Tenant with a monetary order in the amount of **\$1,450.00**. The Tenant is provided with this monetary 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 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*.

Dated: April 29, 2019

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Residential Tenancy Branch