



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 05, 2019 (the “Application”). The Tenant applied for the return of double the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and evidence.

The Tenant testified that the hearing package and evidence were sent by registered mail to the Landlord’s address on January 10, 2019. The Tenant testified that she sent the package to the Landlord’s address as noted on a notice to end tenancy issued to her during the tenancy. The Tenant had submitted the Canada Post customer receipts with Tracking Number 1 on them. The Tenant also submitted evidence showing the Landlord signed for the package January 15, 2019.

Based on the undisputed testimony of the Tenant and evidence submitted, I find the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Further, I accept the Landlord received the hearing package and evidence on January 15, 2019 based on the evidence submitted. I find the Landlord was served in sufficient time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenant testified that there was a verbal tenancy agreement between her and the Landlord in relation to the rental unit. The tenancy started September 15, 2015 and was a month-to-month tenancy. Rent was \$900.00 per month due on the first day of each month. She paid a \$450.00 security deposit. The tenancy ended February 28, 2018. The Landlord still holds the security deposit.

The Tenant submitted a Two Month Notice in support of her testimony that there was a tenancy agreement between her and the Landlord.

The Tenant submitted a copy of a receipt showing she paid a \$450.00 security deposit for the rental unit September 06, 2015.

The Tenant submitted a copy of a prior decision on File Number 1 which involved her and the Landlord. The Tenant and an agent for the Landlord attended the hearing. The undisputed testimony during the hearing was that the tenancy started October 2015 and a \$450.00 security deposit was paid.

The Tenant testified that she provided the Landlord with her forwarding address in writing personally on February 28, 2018.

The Tenant submitted a photo of the note she provided to the Landlord with her forwarding address on it.

The Tenant testified as follows. The Landlord did not have an outstanding monetary order against her at the end of the tenancy. She did not agree in writing at the end of

the tenancy that the Landlord could keep some or all of the security deposit. She is not aware of the Landlord applying to the RTB to keep the deposit.

The Tenant testified as follows. No move-in or move-out inspections were done. The Landlord never provided the Tenant with two opportunities to do these inspections.

### Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenant that the Landlord did not provide her with two opportunities to do a move-in or move-out inspection and find the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I accept the undisputed testimony of the Tenant that the tenancy ended February 28, 2018 and note this is supported by the prior decision submitted. Based on the undisputed testimony of the Tenant, and copy of the note submitted, I accept that the Landlord received the Tenant's forwarding address February 28, 2018. Therefore, the Landlord had 15 days from February 28, 2018 to repay the security deposit or claim against it.

I accept the undisputed testimony of the Tenant that the Landlord never returned the security deposit and did not apply to the RTB to keep the security deposit. Therefore, I find the Landlord failed to comply with section 38(1) of the *Act*.

Based on the undisputed testimony of the Tenant, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$900.00 to the Tenant. I note that there is no interest owed on the deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of \$1,000.00.

### Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$1,000.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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 *Act*.

Dated: May 06, 2019

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Residential Tenancy Branch