



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On January 15, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant appeared at the hearing; however, the Landlord did not. The Tenant testified that the Landlord was served with the Notice of Dispute Resolution Proceeding documents using registered mail sent on January 15, 2018. The Tenant testified that the registered mail was sent to the Landlords home address. The Tenant provided a copy of the registered mail receipt. I find that the Landlord was served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act.

The Tenant testified that she spoke to the Landlord a couple of weeks prior to this hearing in an effort to avoid the hearing and the Landlord would not agree to return the security deposit.

The Tenant affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to the return of double the security deposit?

### Preliminary and Procedural Matters

The Tenant identified that she made a mistake in her application for dispute resolution. In the application, the Tenant identified the Landlord's address as the dispute address. The Tenant requested that her application be amended to provide the correct dispute address. The application is amended accordingly.

### Background and Evidence

The Tenant testified that the parties entered into a tenancy agreement for the Landlord to rent her a unit beginning in October 2018. On August 11, 2018, the Tenant paid the Landlord a security deposit in the amount of \$800.00. The Tenant provided a copy of a receipt dated August 11, 2018, where the Landlord acknowledges receipt of \$800.00 as a deposit to rent a unit.

The Tenant testified that the Landlord informed her that the rental unit was not ready, and subsequently the Tenant discovered that the Landlord rented the unit out to someone else.

The Tenant testified that the Landlord did not return the security deposit to her after she provided the Landlord with her forwarding address in writing. The Tenant provided a copy of a letter sent to the Landlord dated November 21, 2018, requesting the return of the security deposit and providing a forwarding address.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit.

The Tenant is seeking the return of double the security deposit and to recover the cost of the filing fee.

### Analysis

Section 16 of the Act provides that the rights and obligations of a Landlord and Tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the Tenant ever occupies the rental unit.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing,

the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that when the Landlord accepted the security deposit from the Tenant the parties entered into a tenancy agreement. The Landlords rights and obligations under the Act began on August 11, 2018.

I find that the Landlord received the Tenant's forwarding address on November 21, 2018. I find that there was no agreement from the Tenant that the Landlord could keep any amount of the security deposit.

I find that the Landlord failed to make a claim against the security deposit or repay the security deposit within 15 days of receiving the Tenant's forwarding address.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off provides:

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit. I find that the Landlord owes the Tenant the amount of \$1,600.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$1,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with the section 38 of the Act.

The Tenant is awarded double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$1,700.00.

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: May 07, 2019

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Residential Tenancy Branch