



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 681 HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and an agent for the Landlord (the “Landlord”) were both present for the teleconference hearing and were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Landlord stated that he believed another agent for the Landlord submitted evidence to the Residential Tenancy Branch. However, there was no evidence from the Landlord before me and the Tenant confirmed that he did not receive copies of any evidence from the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

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

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started in July 2012 and the Tenant moved out on November 29, 2018. Monthly rent at the end of the tenancy was \$725.00 and a security deposit of \$362.50 was paid at the outset of the tenancy.

The parties also agreed that the Tenant's forwarding address was provided at the move-out inspection on November 29, 2018 and at that time the Tenant agreed to a deduction of \$20.00 for the replacement of light bulbs. The Tenant submitted a copy of the move-out Condition Inspection Report which shows that \$342.50 will be returned to the Tenant from the security deposit. The Tenant has applied for the return of double the security deposit amount due to not receiving the deposit back yet.

The Tenant also submitted text message communication with the Landlord in which they discuss the return of the deposit. The Tenant stated that he checked in numerous times and was told that the cheque had been mailed. As he had still not received it, he kept contacting the Landlord to inquire. He stated that as the Landlord advised him that the cheque had been mailed, he was provided with the option to pay a stop payment fee on the cheque and have a new one mailed to him. The Tenant stated that he chose not to pay the fee and instead filed for dispute resolution. He stated that he has not received any amount of the security deposit back.

The Landlord stated that they mailed a cheque for \$342.50 to the Tenant on December 7, 2018 and thought it may have been delayed due to a mail strike at the time. However, the Landlord stated that the cheque should have arrived a long time ago and questioned whether the Tenant lost the cheque, or it was misplaced by someone else at the Tenant's residence. The Landlord agreed that he offered to stop payment and issue a new cheque but as he took reasonable steps to return the security deposit in time, he felt that the Tenant should be responsible for the stop payment fee.

### Analysis

Regarding the return of a security deposit, Section 38(1) of the *Act* states 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 parties were in agreement that the tenancy ended on November 29, 2018, the same day that the Tenant's forwarding address was provided. Therefore, I find that the Landlord had 15 days from November 29, 2018 to return the deposit or file a claim against it.

The Landlord testified that the security deposit was mailed to the Tenant on December 7, 2018. However, in the absence of any evidence that would confirm this, such as a copy of the cheque or a stamp showing the date it was mailed, I accept the Tenant's testimony that the security deposit has not been returned. As such, I do not have sufficient evidence before me to establish that the Landlord was in compliance with Section 38(1) of the *Act*. Accordingly, I find that Section 38(6) of the *Act* applies as follows:

- (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.

As the parties agreed that \$20.00 was to be retained from the security deposit, I find that the Tenant is owed a total of \$685.00. As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is granted a Monetary Order in the amount outlined below:

Return of security deposit	\$342.50
Amount to double deposit	\$342.50
Recovery of filing fee	\$100.00
<b>Total owing to Tenant</b>	<b>\$785.00</b>

### Conclusion

Pursuant to Section 38 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$785.00** for the return of double the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenant is provided with this 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 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 10, 2019

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Residential Tenancy Branch