



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD

### Introduction

This hearing was set to deal with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement; and, return of double the security deposit. The tenant and her Advocate appeared for the hearing; however, there was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant testified that she sent the proceeding package that was generated by the Residential Tenancy Branch to the landlord on March 4, 2019 via registered mail. That registered mail package was returned as it was unclaimed by the landlord.

The tenant's Advocate sent evidence to the landlord via registered mail on May 22, 2019. A search of the registered mail tracking number showed that package was successfully delivered.

I was also in receipt of evidence, Monetary Order worksheets, and a written submission after the mailing of May 22, 2019. The tenant's advocate acknowledged that those documents were not sent to the landlord.

As for the address used to serve the landlord, the tenant stated that it was the landlord's address of residence during the tenancy and that when she was in court in February 2019 to deal with a Monetary Order the landlord has against the tenant the landlord was still using the same address.

I was satisfied the tenant duly served the landlord with the hearing package and some evidence via registered mail and the landlord is deemed to have received the documents five days after mailing pursuant to section 90 of the Act. I continued to hear from the tenant without the landlord present.

On another procedural matter, I noted that the tenant's monetary claim, except for request of return of the double the security deposit, was not clearly set out. To illustrate: in filing the application the tenant requested the following:

**01 - I want compensation for my monetary loss or other money owed**

**Amount owed:** \$4,060.00

**Applicant's dispute description:**

3000.00 For feb|rent 1860 For oct rent 1200 For the bills for july and aug Cable 500 Gas 250 Hydro 250

The amounts described in the dispute description add to \$7,060.00 and not \$4,060.00 that is claimed.

When I turn to the Monetary Order worksheet, it indicates the tenant is seeking compensation totalling \$1,400.00 for the following items that I find are not entirely clear from the document that was uploaded:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	Receipt issued in January 2017	Proof that extra rent was p	\$ 1000
#2	Additional receipts, specifically \$600 tow	Prior settlement agreemen	\$ 400
#3			\$

Further, when I turn to the Advocate's written submission, the relief sought is compensation of \$4,200.00 for overpaid rent and \$336.00 for reimbursement of 50% of utilities.

Given the varying amounts claimed and insufficient particulars served upon the landlord, I found the tenant's monetary claim was not sufficiently clear or set out and I declined to hear that component of the tenant's claim. I have dismissed these claims with leave to reapply.

I did find the tenant's request for return of double the security deposit to be sufficiently clear and set out on the Application for Dispute Resolution and I proceeded to resolve that issue.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

I was provided unopposed submissions that the tenancy started in February 2017 and the tenant paid a security deposit of \$600.00. On July 28, 2017 the parties participated in a dispute resolution proceeding to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent (file number referenced on the cover page of this decision) and on that date the landlord was awarded a Monetary Order in the amount of \$3,000.00 for unpaid rent. The tenancy was set to continue on a conditional basis and the landlord was provided a conditional Order of Possession.

The tenant submitted that the tenancy came to an end on August 25, 2017.

The tenant acknowledged that the \$3,000.00 Monetary Order has not yet been fully satisfied although she has made payments toward the debt in the sum of approximately \$1,200.00.

The tenant attempted to introduce evidence with a view to disputing the Monetary Order awarded to the landlord on July 28, 2017 \$3,000.00; however, I did not permit such submissions as: (1) decisions and orders issued by the Director, as delegated to an Arbitrator, are final and binding subject only to review provisions; and, (2) I limited the issues that I would resolve to the tenant's claim for return of double the security deposit.

As for seeking return of the security deposit, the tenant submitted that the landlord was provided a forwarding address in writing when the tenant's son left a dispute resolution proceeding package in the landlord's mailbox on February 2, 2018 for a hearing set for September 17, 2018 (file number referenced on the cover page of this decision). The tenant's son did not appear as a witness for this hearing or the September 17, 2018 hearing.

Then in July 2018 the tenant sent the landlord document for a payment hearing in Small Claims court, via registered mail, and the tenant believes her forwarding address also appears on that document. The tenant did not have the registered mail receipt or tracking number or a copy of the document to which she was referring.

The tenant testified that the landlord has not refunded the security deposit and the landlord did not make an Application for dispute Resolution to make a claim against it. Further, the tenant stated that in the court proceeding to deal with the Monetary Order the judge asked whether disposition of the security deposit has been resolved and both the landlord and tenant indicated it had not.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 38 of the Act provides for return of a security deposit. The tenant seeks return of double the security deposit, which is provided in section 38(6) of the Act.

Below, I have reproduced relevant portions of section 38 for the parties' reference:

#### **Return of security deposit and pet damage deposit**

**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.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

- (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.

[My emphasis underlined]

In this case, the Director had ordered the tenant to pay the landlord \$3,000.00 for outstanding rent for May 2017, June 2017 and July 2017 on July 28, 2017. The tenant acknowledged that she did not satisfy that Monetary Order by the time the tenancy ended in August 2017. Therefore, I find the landlord was entitled to retain the tenant's security deposit under section 38(3).

Since the landlord was entitled to retain the security deposit under section 38(3) the landlord was not obligated to refund or make an Application for Dispute Resolution to claim against the security deposit, as provided in section 38(1) even if the tenant did provide a forwarding address to the landlord.

In light of the above, I find the landlord did not violate section 38(1) of the Act and I dismiss the tenant's request for doubling the security deposit.

Having been satisfied the landlord was lawfully entitled to retain the tenant's \$600.00 security deposit because a Monetary Order previously issued has still outstanding, and the landlord did not file an Application to claim against the security deposit for anything else, I order that the amount of the security deposit must be deducted from the balance owing on the Monetary Order in keeping with section 72(2)(b) of the Act.

Section 72(2) provides as follows:

**Director's orders: fees and monetary orders**

- 72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

[My emphasis underlined]

This decision may be submitted to the Provincial Court (Small Claims) in support of deducting the amount of the security deposit from the balance of the Monetary Order that remains outstanding.

### Conclusion

The tenant's request for return of double the security deposit is dismissed as the landlord was entitled to retain the \$600.00 security deposit in partial satisfaction of the Monetary Order that remained outstanding. Accordingly, the \$600.00 security deposit must be deducted from the amount of the Monetary Order in determining the balance that remains outstanding.

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: June 13, 2019

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Residential Tenancy Branch