



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference and provided testimony and presented evidence. The landlord did not attend or submit any documentary evidence. The tenant provided direct testimony that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post, XpressPost with a tracking request. The tenant was unable to provide any further details. I accept the undisputed testimony of the tenant and find that the landlord was sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$1,000.00 for return of the security deposit and \$100.00 for recovery of the filing fee for a total of \$1,100.00.

The tenant stated that a \$1,000.00 security deposit was paid to the landlord via etransfer on October 19, 2018. The tenant stated that the tenancy ended on January 28, 2019 and that the landlord was provided with her forwarding address via email on February 6, 2019 for which there was no response from the landlord. A written copy was mailed to the landlord requesting the return of the security deposit on February 10, 2019 via Canada Post Registered Mail. The tenant has provided a copy of the email and the Canada Post Customer Receipt Tracking label as confirmation. The tenant provided testimony that the package was signed and received by the landlord on February 25, 2019. The tenant stated that as of the date of this hearing the landlord has not returned the \$1,000.00 deposit. The tenant confirmed that permission was not given to the landlord to retain the deposit nor has the tenant received an application filed with the Residential Tenancy Branch Disputing its return.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenant and find that the tenancy ended on January 28, 2019 and that the tenant provided her forwarding address in writing for the return of the \$1,000.00 security deposit via Canada Post Registered Mail on February 10, 2019 as confirmed by the tenant's submission of the Canada Post Customer Receipt Tracking Number. As such, I find that the tenant has established a claim for return of the \$1,000.00 security deposit.

I also find that the landlord failed to comply with section 38(1) of the Act and is subject to 38(6). The tenant provided undisputed evidence that the landlord did not return the security deposit within 15 days of the tenancy ending/receiving the tenant's forwarding address in writing nor has the landlord filed an application to dispute its return. The tenant is also entitled to compensation equal to the security deposit of \$1,000.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$2,100.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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 *Residential Tenancy Act*.

Dated: June 20, 2019

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Residential Tenancy Branch