



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFT MNSD**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee.

The landlord's agent KH attended ("the landlord"). The tenant attended. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenant served the landlord in accordance with section 89 of the *Act*.

### **Issue(s) to be Decided**

Is the tenant entitled to:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee.

### **Background and Evidence**

The parties agreed that the tenancy began on January 1, 2011 and ended on December 31, 2018 after the tenant provided notice to vacate. Rent was \$1,073.27 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$450.00. The tenant provided his forwarding address on the last day

of the tenancy in the condition inspection report. Copies of the tenancy agreement and notice to vacate were submitted by the tenant.

At issue is the return of the security deposit by the landlord. The tenant claimed entitlement to a doubling of the security deposit as the landlord returned a part of the security deposit only within 15 days and the balance outside the 15-day period. The landlord denied this version of events and stated the landlord returned the full amount within 15 days.

The tenant explained that the landlord returned part of the security deposit (\$425.00) by cheque dated January 15, 2019 and received by him three days later. The cheque was in the amount of \$514.59 which included reimbursement by the landlord for unauthorized cutting of the tenant's bicycle lock of a value of \$89.59. The tenant's calculation is as follows:

ITEM	AMOUNT
Security deposit (partial return)	\$425.00
Reimbursement bicycle lock	\$89.59
<b>Total cheque dated January 15, 2019.</b>	<b>\$514.59</b>

In support of his claim, the tenant submitted a copy of his ledger for the entire tenancy, which had been provided by the landlord with the January 19, 2019 payment.

The ledger showed the following:

- an opening balance of \$450.00 for the security deposit;
- all credits and debits for monthly rent;
- a \$25.00 deduction for a "late fee" on July 4, 2016;
- a credit for "bike lock" on November 30, 2018 of \$89.59;
- a "deposit refund" on January 14, 2019 of \$514.59; and
- a current balance of zero.

The tenant provided a copy of the condition inspection report on moving out dated December 31, 2018 which provided the tenant's forwarding address. In the "security deposit statement" portion of the form, the tenant's security deposit is referenced without any mention of a deduction.

As stated, the landlord denied that the landlord failed to return the tenant's security deposit within 15 days.

The landlord explained the following. The January 15, 2019 cheque for \$514.59 was intended to be a return of the full security deposit of \$450.00 plus return of the balance of the credit on the tenant's account for which the landlord provided no clear explanation. The landlord's calculation is as follows:

ITEM	AMOUNT
Security deposit (full return)	\$450.00
Reimbursement	\$64.59
<b>Total cheque dated January 15, 2019.</b>	<b>\$514.59</b>

In early March 2019, the tenant received a second cheque from the landlord. This cheque was dated January 15, 2019 and was for \$25.00. The tenant submitted a copy of an email from the tenant to the landlord stating that he had received the cheque and that the envelope was postmarked February 27, 2019. He asked for the return of double his damage deposit.

The tenant testified he was unaware that he had been charged a late fee and always paid promptly by post dated cheques. On February 22, 2019, the tenant wrote the landlord by email, a copy of which the tenant submitted as evidence. In the email, the tenant stated that \$25.00 was deducted from his damage deposit, he was "not sure what this is about", and he "did not consent to this being withheld from my damage deposit". The landlord informed the tenant during the hearing that the landlord had run out of postdated cheques once and accordingly a late fee was charged.

The tenant understood that this payment, albeit late, was intended to provide him with the balance remaining on his security deposit.

The landlord disagreed. She testified that the landlord decided to repay to the tenant the \$25.00 late fee "as a courtesy". The landlord denied that the payment was a reimbursement of the balance owing to the tenant of \$25.00 for the security deposit.

In summary, the tenant stated the landlord did not return the security deposit within 15 days as required by the Act. He claimed a doubling of the security deposit as follows:

ITEM	AMOUNT
Security deposit (\$450.00 x 2 = \$900.00)	\$900.00
Partial return January 15, 2019	(\$425.00)
Partial return March 1, 2019	(\$25.00)
<b>Monetary award requested by tenant</b>	<b>\$450.00</b>

The tenant testified no proceedings for dispute resolution had been commenced by the landlord against the tenant with respect to the security deposit.

In addition, the tenant requested reimbursement of the filing fee in the amount of \$100.00 for a total monetary award requested of \$550.00.

### Analysis

I have reviewed all evidence and testimony before me meeting the requirements of the rules of procedure. However, I refer to only the relevant facts and issues in this decision.

The *Act* contains comprehensive provisions regarding security and pet damage deposits in section 38 and the *Residential Tenancy Policy Guideline 17 – Security Deposit and Set Off*.

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to do one of the following:

- return the security deposit to the tenant,
- reach written agreement with the tenant to keep some or all of the security deposit, or
- make an application for dispute resolution claiming against the deposit.

Section 38 states as follows:

*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.*

If that does not occur, the landlord must pay a monetary award equivalent **to double the value of the security deposit**. Section 38(6) states 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*

However, this provision does *not* apply if the landlord has obtained a tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the tenant provided the tenant's forwarding address in writing pursuant to section 38(1)(b) on December 31, 2018 as the address was written in the Condition Inspection Report of that date.

I also find the tenant had not provided consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a). In reaching this conclusion, I have found the tenant's evidence credible and compelling as it is supported by the following:

- the condition inspection report indicating no deduction is taken by the landlord from the security deposit,
- emails from the tenant to the landlord requesting return of the balance of the security deposit after the 15-day period,
- the landlord's tenant ledger indicating \$25.00 was withheld from the security deposit for a late fee in 2016, and
- the eventual return of the balance of \$25.00 by the landlord outside the 15-day period.

I do not accept the landlord's evidence that the cheque of January 19, 2019 included a return of the security deposit in its entirety. The landlord's own ledger indicates that this is not correct. I do not find the landlord's version of events to be believable or supported

by the evidence; I dismiss the landlord's evidence as self-serving and a poor attempt to shirk responsibility.

In situations such as this, section 38(1)(c) requires the landlord to either file a claim against the security deposit within 15 days of the receipt of the tenant's forwarding address or return the security deposit.

I find the landlord has not filed an application against the security deposit within 15 days of receipt of the tenant's forwarding address on December 31, 2018.

As the landlord has neither returned the security deposit in full nor filed a claim within 15 days, the doubling provisions apply. That is, section 38(6)(b) applies:

(6) If a landlord does not comply with subsection (1), [repaying the security deposit or filing an application within 15 days] the landlord

...

(b) **must pay the tenant double the amount of the security deposit,**

...

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the full security deposit or apply for dispute resolution as required.

As the tenant has been successful in his claim, I grant a monetary award of \$100.00 for reimbursement of the filing fee.

In summary, I find the tenant is entitled to double the amount of the security deposit (\$450.00) and reimbursement of the filing fee (\$100.00) less \$450.00 paid by the landlord for a total monetary order of \$550.00 calculated as follows:

ITEM	AMOUNT
Security deposit ( $\$450.00 \times 2 = \$900.00$ )	\$900.00
Partial return January 15, 2019	(\$425.00)
Partial return March 1, 2019	(\$25.00)
Reimbursement of filing fee	\$100.00

<b>Monetary award requested by tenant</b>	<b>\$550.00</b>
---	-----------------

Conclusion

I order the landlord pay to the tenant the sum of **\$550.00** pursuant to sections 38 and 72 of the *Act*. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail 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 *Residential Tenancy Act*.

Dated: July 06, 2019

---

Residential Tenancy Branch