



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On March 15, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

J.H. attended the hearing as an advocate for the Tenant; however, authorization was not provided by the Tenant to appoint another party to represent her during this legal proceeding, pursuant to Rule 6.8 of the Rules of Procedure. J.H. contacted the Tenant and had her call into the hearing to provide authorization for him to act on her behalf. Despite this being a “waste of her time”, the Tenant confirmed that she authorized J.H. to represent her during this hearing. As the phone number that the Tenant called from was identical to the one she provided on her Application, I was satisfied that this was the Tenant and that this constituted her authorization to have J.H. appear as her representative in this matter. The Landlord also attended the hearing. All in attendance provided a solemn affirmation.

J.H. advised that the Notice of Hearing and evidence package was served to the Landlord by Xpresspost on March 19, 2019 and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that his evidence package was served to the Tenant by registered mail on June 10, 2019 and J.H. confirmed receipt of this package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of

Procedure, I am satisfied that the Tenant was served with the Landlord's evidence package. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy originally started in the basement suite; however, that tenancy ended, and this Application pertained to the tenancy that started in the upstairs rental unit. All parties agreed that this tenancy started on July 1, 2018 and the tenancy ended on December 31, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,600.00 per month, due on the first day of each month. A security deposit of \$750.00 was paid. The Landlord advised that he also collected a \$250.00 utility deposit, which J.H. confirmed.

All parties agreed that a letter with the Tenant's forwarding address in writing was provided to the Landlord on or around February 22, 2019. The Landlord submitted, as documentary evidence, a letter indicating that the Tenant authorized the Landlord to keep \$701.25 of the Tenant's \$750.00 security deposit. He advised that he has not returned the balance of the security deposit of \$48.75 or the \$250.00 utility deposit, or made an Application to keep either deposit. J.H. confirmed that the Tenant signed to allow the Landlord to keep that portion of the security deposit; however, it is his belief

that the Landlord should not be allowed to keep it as the Landlord did not use that money to complete any of the noted cleaning.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 19 of the *Act* states that the Landlord cannot take a security deposit that exceeds a half month's rent, and if the Landlord should do so, the Tenant may deduct this from a future month's rent.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Section 38(4) of the *Act* permits the Landlord "to retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant".

Based on the undisputed evidence before me, a forwarding address in writing was provided by the Tenant on or around February 22, 2019. I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant's written consent.

Regardless of J.H.'s belief of what the Landlord's intention was with respect to cleaning or repairs at the end of the tenancy, the undisputed evidence is that the Tenant provided written authorization for the Landlord to keep \$701.25 of the security deposit. As such, I am satisfied that the Landlord was permitted to keep this amount of the Tenant's security deposit. However, the undisputed evidence before me is that the

Landlord did not return the balance of the security deposit in full or make an Application to keep this portion of the deposit within 15 days of February 22, 2019. As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act*, and did not comply with the requirements of Section 38, I find that the Tenant is granted a monetary award amounting to double the remainder of the original security deposit that was not returned. Under these provisions, I grant the Tenant a monetary award in the amount of **\$97.50**.

With respect to the utility deposit of \$250.00 that the Landlord collected, the *Act* does not permit the Landlord to collect such a deposit. Based on the evidence before me, I am satisfied that this was an illegal security deposit collected by the Landlord and Section 38 of the *Act* should apply to this amount as well. As the Landlord has not returned this deposit in full or made an Application to keep this deposit within 15 days of February 22, 2019, the Landlord illegally withheld this deposit contrary to the *Act*. As such, I find that the doubling provisions apply as well, and the Tenant is granted a monetary award amounting to double this deposit that was not returned. Under these provisions, I grant the Tenant a monetary award in the amount of **\$500.00**.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenant**

Doubling of the remainder of the security deposit	\$97.50
Doubling of the utility deposit	\$500.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$697.50</b>

#### Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$697.50** 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: July 8, 2019

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Residential Tenancy Branch