



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package, the amendment to the application for dispute in person on March 23, 2019. Both parties confirmed the tenant served the landlord with his submitted documentary evidence via Xpress Post on May 23, 2019. Both parties also confirmed the landlord served the tenant with her submitted documentary evidence via Canada Post Registered Mail on April 12, 2019. As both parties have attended and confirmed receipt of the notice of hearing package, the amendment to the application for dispute and the submitted documentary evidence of both parties, I find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

### Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant had filed an amendment to the application for dispute reducing the monetary claim to \$900.00 for the return of double the \$400.00 security deposit and recovery of the \$100.00 filing fee. The tenant

cancelled his monetary claim for compensation. The hearing proceeded on the below noted issues.

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

During the hearing, the landlord argued that this was a roommate shared accommodation situation and as such, the Residential Tenancy Act did not apply. The named landlord provided testimony that she was a tenant with a landlord for this rental property who was the owner. The named landlord stated that she started this tenancy without the named tenant prior to him occupying the rental property. The named landlord stated that she collected rent from the named tenant and that she would pay her landlord the owner separately. The named landlord confirmed that she was not the owner of the rental property. The landlord provided a copy of a single tenancy agreement between herself and her landlord, the owner and a separate agreement between herself and the named tenant.

Section 4(c) of the Act excludes jurisdiction over disputes in relation to living accommodations in which **the tenant shares bathroom or kitchen facilities with the owner of that accommodation.**

On the basis of paragraph 4(c) of the Act, I find that I do have jurisdiction over this matter as the named landlord is not the owner of the accommodation. The named landlord created a sub-tenancy.

I understand according to submissions from the landlord that there was another finding issued in respect of this type of tenancy for her previously. It appears from the earlier decision based upon the landlord's submissions that the issue of jurisdiction was declined by the previous decision maker. I make no comment as to the legal status of this earlier finding. The hearing shall proceed.

At the conclusion of the hearing, the tenant stated that he has relocated to a new address and has provided a new mailing address for delivery of the decision. The Residential Tenancy Branch File shall be updated to reflect the tenant's new mailing address.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double 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.

Both parties confirmed that this tenancy began on December 23, 2018 on a month-to-month basis as per the submitted copy of the Tenancy Contract with P.P. and Resident under Shared Accommodation. It states in part that monthly rent is \$800.00 payable on the 23<sup>rd</sup> day of each month and that a \$400.00 security deposit was paid.

The tenant seeks a monetary order for \$900.00 which consists of:

\$400.00	Return of Original Security Deposit
\$400.00	Compensation, Sec. 38(6), Fail to Comply
\$100.00	Filing Fee

Both parties provided testimony confirming that the tenancy ended on March 1, 2019 and that a \$400.00 security deposit was paid by the tenant to the landlord. Both parties also confirmed that the tenant provided his forwarding address in writing (at the landlord's request) to the landlord on March 1, 2019 during the move-out.

The landlord confirmed that she holds the security deposit and that she did not file for dispute for returning the security deposit as she was of the opinion that the Act did not apply. Both parties also confirmed that the tenant did not give consent to the landlord to retain the security deposit.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) 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 and/or pet damage deposit(s).

In this case, I accept the undisputed testimony of both parties and find that the landlord did not return the original \$400.00 security deposit within the allowed 15 day time period or at any time thereafter. The tenant has been successful for return of the original \$400.00 security deposit.

I find based upon the testimony of both parties that the landlord did not file for dispute of returning the security deposit in a claim for compensation/damages within the allowed 15 day time period. As such, the tenant's request for compensation under section 38(6) is granted. The tenant is entitled to an additional \$400.00.

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 \$900.00.

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 08, 2019

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Residential Tenancy Branch