



# 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 the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

### Issues

Is the tenant entitled to a return of all or a portion of the security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy was set to begin on March 15, 2019. The tenant cancelled the contract prior to moving into the unit. The tenant had paid a security deposit of \$1050.00 which the landlord continues to hold.

The tenant is claiming the landlord failed to return the security deposit within 15 days of the date the landlord received the tenant's forwarding address in writing. The tenant submitted an e-mail dated April 1, 2019 as proof of providing a forwarding address to the landlord for return of the deposit.

The landlord acknowledged receipt of the e-mail dated April 1, 2019.

### Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenant double the amount of the security deposit, pet deposit, or both, as applicable.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act.

Section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with section 88 or 89 of the Act. I accept the tenant's evidence and find the landlord was sufficiently served with a forwarding address by e-mail message on April 1, 2019. I make this finding as the correspondence submitted by the tenant shows the landlord received and responded to the tenant's request for return of the security deposit and also acknowledged receipt of the e-mail in this hearing.

The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The landlord did not have written authorization to retain the security deposit or file an application to claim against the deposit within fifteen days. The tenant was advised of the doubling provisions of section 38 of the Act; however, the tenant testified that she understood this provision but waived her right to such. The tenant was only seeking the amount claimed in the application.

I allow the tenant's claim for return of the security deposit and award an amount of \$1050.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1150.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1150.00. 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 23, 2019

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Residential Tenancy Branch