



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FFT

### **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 the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on April 16, 2019. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on April 21, 2019, five days after mailing. The landlord did not submit any written evidence for this hearing.

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

Is the tenant entitled to the return of their security deposit?

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

### **Background and Evidence**

The tenant provided the following undisputed testimony as the landlord did not attend. This fixed-term tenancy began on May 1, 2018, and was to end on April 29, 2019. Monthly rent was set at \$2,200.00. The tenant paid a security deposit in the amount of \$1,100.00, which the landlord still holds. The tenancy ended on August 1, 2018. A previous hearing was held on March 14, 2019, and the landlord was ordered to return the August 2018 rent to the tenant. The tenant had applied under section 38 for the return of her security deposit, but the Arbitrator found the application premature as the tenant had not yet provided her forwarding address to the landlord, and this portion of the tenant's application was dismissed with leave to reapply.

The tenant testified that she had provided the landlord with her forwarding address by registered mail on March 14, 2019, but the landlord has failed to return any portion of her security deposit. The tenant provided the tracking information for the package in her evidentiary materials.

### **Analysis**

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or 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."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

I find that the tenant is also entitled to recover the filing fee for this application.

### **Conclusion**

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$1,100.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,100.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,300.00</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: August 6, 2019

---

Residential Tenancy Branch