



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 pursuant to section 72.

The tenant's representative, NM, attended for the tenant ("the tenant"). The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 16, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on July 21, 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on July 21, 2019.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called

into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

I informed the tenant of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

#### Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return double the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

#### Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the parties entered into a tenancy agreement that commenced on June 1, 2017 and ended on August 31, 2017. No written tenancy agreement was signed. Rent was \$700.00 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit of \$700.00 which the landlord holds. The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified that the tenant sent the landlord the tenant's forwarding address for the return of the security deposit on May 17, 2019 by registered mail. The tenant submitted the Canada Post tracking number in support of service to which I refer on the cover page.

The tenant testified that the landlord has not returned the security deposit or filed an application to retain it.

The tenant requested a monetary award of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address on May 17, 2019, deemed received by the landlord under section 90 five days later, that is, on May 22, 2019.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary award of \$1,400.00 as well as reimbursement of the filing fee for a total monetary order of \$1,500.00.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$700.00
Doubling of security deposit - section 38(6)	\$700.00
Reimbursement of filing fee – section 72	\$100.00

<b>Monetary Award</b>	<b>\$1,500.00</b>
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Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,500.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: October 21, 2019

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Residential Tenancy Branch