



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing while no one called in for the Landlord. The Tenant was affirmed to be truthful in his testimony. He stated that the Landlord was served in person with the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant stated that they arranged to meet the Landlord at the rental unit and although unsure of the exact date of service, confirmed that the documents were served within the time allowable. I accept the Tenant’s affirmed testimony and find that the Landlord was served in person in accordance with Sections 88 and 89 of the *Act*.

The Tenant noted that they did not serve the Monetary Order Worksheet to the Landlord and therefore this document is not accepted and will not be considered in this decision. The Landlord did not submit any evidence prior to the hearing.

The Tenant was provided with the opportunity to present evidence and make submissions.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Tenant provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement that was submitted into evidence. The tenancy began on November 4, 2017. Rent was initially set at \$1,100.00 and was raised \$50.00 during the tenancy. The Tenant stated that at the end of the tenancy the monthly payment was \$1,250.00 which included \$100.00 for utilities. The Tenant submitted copies of cheques from February, March and April 2019 which show a payment of \$1,250.00 each month.

The Tenant paid a security deposit of \$550.00 at the start of the tenancy and stated that he has not received any amount back from the deposit. He also stated that he did not agree to any deductions from the security deposit. The Tenant noted that the Landlord had offered him a partial return of the security deposit which the Tenant declined as he did not believe the Landlord had a reason to withhold any amount from the deposit. The Tenant applied for compensation in the amount of \$550.00 for the return of the security deposit.

The Tenant testified that they moved out on May 1, 2019 and stated that on May 27, 2019 they served the Landlord in person with a letter that included their forwarding address. The Tenant submitted a copy of the letter into evidence which notes his forwarding address and requests the return of the full security deposit.

### Analysis

Section 38(1) of the *Act* states that a landlord has 15 days from the later date of when the tenancy ends or when the forwarding address is provided in writing to return the security deposit or file a claim against it. I accept the testimony of the Tenant that the tenancy ended on May 1, 2019. I also accept the testimony of the Tenant that his forwarding address was provided on May 27, 2019, which is supported by a copy of the letter that was submitted into evidence.

Therefore, I find that the Landlord had 15 days from May 27, 2019 to return the deposit or file a claim against it. I accept the Tenant's testimony that no amount of the deposit

has been returned and I have no evidence before me that the Landlord filed an Application for Dispute Resolution to retain the deposit.

As stated in Section 38 of the *Act*, a landlord may retain an amount from the deposit that the Tenant agrees to in writing, that the tenant is ordered to pay the landlord, or that remains outstanding from a previous Monetary Order.

However, I have no evidence before me that any of these situations apply and I accept the Tenant's testimony that he did not agree to any deductions from the security deposit.

Accordingly, I find that the Landlord was not in compliance with Section 38(1) of the *Act* and therefore, Section 38(6) of the *Act* applies as follows:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Although the Tenant applied for the return of the security deposit in the amount of \$550.00, as stated in *Residential Tenancy Policy Guideline 17*, a tenant is awarded double the deposit unless they specifically waive their right to double. I do not have any testimony or evidence before me that the Tenant has waived their right to double the deposit and therefore award the Tenant double the deposit in the amount of \$1,100.00.

As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is granted a Monetary Order in the amount of \$1,200.00.

### Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,200.00** as outlined above. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Tenant 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: November 05, 2019

---

Residential Tenancy Branch