



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### 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 for reimbursement of the filing fee pursuant to section 72.

DG attended as agent for the landlord (“the landlord”). The tenant attended. The hearing process was explained, and the parties were granted an opportunity to ask questions. No issues of service were raised. I find that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*.

I informed the parties of the provisions of section 38 of the *Act* which requires 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:

- A monetary award equivalent to double the value of the security deposit because of the landlord’s failure to comply with the provisions of section 38 of the *Act*?
- Reimbursement of the filing fee under section 72?

### Background and Evidence

The parties agreed the tenancy began on August 1, 2016 and ended on August 31, 2017. Rent was \$3,900.00 payable on the first of the month. At the beginning of the tenancy, the tenant paid \$1,950.00 for a security deposit and \$1,950.00 for a pet deposit (together \$3,900.00 and referred to as the “security deposit”).

The parties acknowledged the tenant provided their forwarding address in wiring to the landlord on January 4, 2018. The parties agreed the landlord did not return the security deposit or file an application for dispute resolution within 15 days.

The parties agreed the tenant has not provided consent to the landlord to retain any portion of the security deposit.

The landlord stated that the landlord has an unfiled claim for compensation against the tenant, including breach of a fixed term tenancy.

The tenant claimed reimbursement of double the security deposit as the landlord did not return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing. The tenant’s claim is as follows:

ITEM	AMOUNT
Security Deposit	\$1,950.00
Doubling of Security Deposit	\$1,950.00
Reimbursement of the Filing Fee	\$100.00
(Less Security Deposit Returned)	(\$0)
<b>TOTAL CLAIM</b>	<b>\$4,000.00</b>

### Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

*38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*  
*(a) the date the tenancy ends, and*  
*(b) the date the landlord receives the tenant's forwarding address in writing,*  
*the landlord must do one of the following:*  
*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*  
*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states 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*

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 the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided their forwarding address in writing pursuant to section 38(1)(b) on January 4, 2018 as acknowledged by the landlord. I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit. Accordingly, I grant the tenants a monetary award in the amount of \$3,900.00 (2 x \$1,950.00). As the tenants are successful in their application, I further grant the tenants reimbursement of the filing fee.

My award to the tenants is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$1,950.00
Doubling of Security Deposit	\$1,950.00
Reimbursement of the Filing Fee	\$100.00
(Less Security Deposit Returned)	(\$0)
<b>TOTAL AWARD</b>	<b>\$4,000.00</b>

The landlord may still file an application for alleged damages. However, the landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

*2.1 Starting an Application for Dispute Resolution*

*To make a claim, a person must complete and submit an Application for Dispute Resolution.*

Therefore, the landlord must file their own application to keep the deposit within the 15 days of certain events, as explained above.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of **\$4,000.00**.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: December 23, 2019

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Residential Tenancy Branch