



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double the \$975.00 security deposit, and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on August 1, 2016, and ran until February 1, 2017, after which time it functioned on a month-to-month basis. The Parties agreed that the Tenant paid the Landlord a monthly rent of \$1,950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$975.00, and no pet damage deposit.

The Parties agreed that the Tenant sent the Landlord his forwarding address in writing by registered mail on August 6, 2019. According to section 90 of the Act, this notice was deemed served on the Landlord on August 11, 2019.

The Parties agreed that the Landlord returned a portion of the security deposit in the amount of \$670.51. The Landlord said that the Tenant was responsible for damage to the microwave and insufficient cleaning of the rental unit at the end of the tenancy.

The Landlord directed my attention to an email from the Tenant dated August 6, 2019 in which the Tenant agreed to pay one quarter of the cost of the new microwave, which was \$272.73 for the appliance and \$236.25 for installation for a total of \$508.98. One quarter of this amount is \$127.25.

In the email from the Tenant to the Landlord dated August 6, 2019, in reply to the Landlord's email of that date, the Tenant questioned the Landlord's request for reimbursement for a damaged microwave. The Tenant's statement highlighted by the Landlord in her submission of this email states: "I am offering to pay ¼ of the microwave cost. Unfortunately, I do not agree with your estimate."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenant provided his forwarding address to the Landlord on August 11, 2019, and that the tenancy ended on July 31, 2019. Section 38(1) of the Act states the

following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

**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.

The Landlord was required to return the \$975.00 security deposit to the Tenant within fifteen days of August 11, 2019, namely by August 26, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Parties' evidence is that she returned \$670.51 of the security deposit and did not apply to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with her obligations under Section 38(1).

I also find that the email communication between the Landlord and the Tenant can be characterized as negotiation. I find that the Tenant did not agree to the Landlord deducting a specific amount from the security deposit in this regard; I find that their negotiations were not concluded in this email chain. Therefore, I find that the Landlord made an unauthorized deduction from the security deposit.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant \$1,950.00 from the Landlord in recovery of double the security deposit, less the amount she has already paid of \$670.51, for a total award of \$1,279.49. Given that the Tenant was successful in his Application, I also award him recovery of the \$100.00 Application filing fee for a total award of **\$1,379.49**.

### Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of \$1,950.00. The Landlord did not return the Tenant's full security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenant's forwarding address. I award the Tenant with double the amount of the \$975.00 security deposit, plus recovery of the \$100.00 Application filing fee, less the \$670.51 that the Landlord has already returned to the Tenant for a total Monetary Award of \$1,379.49.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,379.49.**

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 20, 2020

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Residential Tenancy Branch