



# 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* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 15 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package on September 20, 2019, by way of registered mail to the address where the landlord was residing, the upper unit of the same rental property where the tenant was living. The tenant claimed that she spoke to the new basement tenants now living at the rental property and they confirmed that the landlord was still living there, as of one month prior to this hearing date.

The tenant provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on September 25, 2019, five days after its registered mailing, to the address where the landlord was residing.

### Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

### Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This month-to-month tenancy began on April 1, 2019 and ended on August 31, 2019. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed, only a verbal agreement was reached. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address by way of giving a letter to the landlord in person on August 31, 2019, when returning the rental unit keys. The tenant also provided a text message with this same letter to the landlord on September 3, 2019. The tenant provided a copy of the letter. The tenant did not receive an application for dispute resolution from the landlord to retain the tenant's security deposit. The landlord did not have permission to keep the tenant's security deposit.

The tenant seeks a return of double the amount of her security deposit of \$450.00, totalling \$900.00, plus the \$100.00 application filing fee.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously

ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the testimony and written evidence of the tenant. The tenancy ended on August 31, 2019. The tenant provided a written forwarding address to the landlord by way of a letter handed to the landlord in person on August 31, 2019.

I find that the tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of August 31, 2019, the end of tenancy date and the forwarding address date.

In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$450.00, totaling \$900.00. There is no interest payable on the deposit during the period of this tenancy.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,000.00 against the landlord. The landlord must be served with 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: January 17, 2020