



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 24, 2019 (the “Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with G.N. to assist given a language barrier. G.N. also said he lived with the Tenant at the rental unit. The Landlord did not appear at the hearing.

The Tenant confirmed he is seeking double the security deposit back if I find the Landlord failed to comply with the *Residential Tenancy Act* (the “Act”).

I explained the hearing process to the Tenant and G.N. who did not have questions in this regard. The Tenant and G.N. provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and evidence. G.N. testified that the hearing package and evidence were sent to the Landlord at the address on the Application by registered mail between October 25 to 28, 2019. G.N. testified that the rental unit address is a house with two suites and that the Tenant lived in one suite and the Landlord lived in the other suite. The Tenant submitted a 10 Day Notice which supports this. G.N. testified that this is where the package was sent. Neither the Tenant nor G.N. could provide a tracking number for the package. There is no evidence before me about service of the hearing package or evidence.

Based on the undisputed testimony of G.N., I am satisfied the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the hearing package and evidence November 02, 2019 at

the latest. I find the hearing package and evidence were served in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant and G.N. were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the Tenant and G.N. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

G.N. testified as follows. There was a verbal tenancy agreement between the Landlord and Tenant in relation to the rental unit. Rent was \$1,750.00 per month due on the first day of each month. The Tenant paid a \$875.00 security deposit. The Landlord still holds the security deposit.

The Tenant testified that the tenancy started April 01, 2018 and ended August 31, 2019.

G.N. confirmed that the Tenant provided his forwarding address to the Landlord in a letter dated September 12, 2019 sent by regular mail to the Landlord. The Tenant submitted a photo of the letter, envelope addressed to the Landlord and a Canada Post receipt dated September 13, 2019.

G.N. testified as follows. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep the security deposit.

G.N. testified that the Landlord did not give the Tenant two opportunities to do a move-in or move-out inspection.

The Tenant submitted a 10 Day Notice issued to G.N. by the Landlord in September of 2019. It shows rent was \$1,750.00.

### Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the undisputed testimony of the Tenant, I am satisfied the tenancy ended August 31, 2019.

Based on the undisputed testimony of G.N. and the photo submitted, I am satisfied the Tenant sent the Landlord his forwarding address in writing by regular mail on September 13, 2019. Based on the photo and 10 Day Notice, I am satisfied the mail was sent to the Landlord's address. I find the forwarding address was served in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the forwarding address September 18, 2019.

I find September 18, 2019 to be the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from September 18, 2019 to repay the security deposit in full or file a claim with the RTB claiming against it.

Based on the undisputed testimony of G.N., I am satisfied the Landlord did not repay the security deposit. There is no evidence before me that the Landlord filed a claim against the security deposit with the RTB. I find the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
  - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Based on the undisputed testimony of G.N., I am satisfied none of the exceptions to section 38(1) of the *Act* outlined in sections 38(2) to 38(4) of the *Act* apply.

I find the Landlord failed to comply with section 38(1) of the *Act* and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,750.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,850.00. I issue the Tenant a Monetary Order in this amount.

### Conclusion

The Tenant is entitled to \$1,850.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the 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 *Act*.

Dated: March 13, 2020

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Residential Tenancy Branch