



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

On October 19, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and M.F. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on or around October 24, 2019 and M.F. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

M.F. advised that the Landlord’s evidence was served to the Tenant by registered mail on February 24, 2020 and the Tenant confirmed that he received this package. As this evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?

- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2018 and ended when the Tenant gave up vacant possession of the rental unit on September 29, 2019. Rent was established at \$1,150.00 per month, due on the first day of each month. A security deposit of \$575.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant provided his forwarding address in writing on the move-out inspection report on September 29, 2019.

M.F. advised that the deposit was electronically transferred back to the Tenant on October 11, 2019 as per the Landlord's accounting statements submitted as documentary evidence. However, it was discovered on October 16, 2019 that there was an administrative error in the financial department and the wrong bank account number was used for the Tenant. Once alerted to this error, the Landlord returned this deposit back to the Tenant's correct bank account number on October 17, 2019. She stated that this was not done purposefully and there was no intent to harm the Tenant in any way, despite the breaks the Landlord gave him. She stated that this was simply due to human error and the Landlord should not be penalized for it, especially as this was dealt with immediately following the discovery that there was an error.

The Tenant advised that he understood that this was a mistake caused by human error; however, he was a good Tenant and is simply seeking compensation as the Landlord has not complied with Section 38 of the *Act*.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the

Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the undisputed evidence is that the Tenant provided a forwarding address in writing on September 29, 2019 and that the tenancy ended on this date as well. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain the deposit without the Tenant's written consent.

While I understand the Landlord's position that they attempted to return the deposit in full within this 15-day timeframe to comply with the *Act*, the consistent and undisputed evidence is that they failed to return the deposit in full to the Tenant within this deadline, due to their own inadvertent administrative error.

As the Tenant did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of September 27, 2019, I find that the Landlord illegally withheld the deposit contrary to the *Act*, and did not comply with the requirements of Section 38.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit. ~~Under these provisions, I grant the Tenant a monetary award in the amount of \$1,150.00. However, as the Tenant has already been paid back the amount of his security deposit, I grant the Tenant a monetary award in the amount of \$575.00.~~

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

#### Calculation of Monetary Award Payable by the Landlord to the Tenant

<del>Doubling of the security deposit</del>	<del>\$1,150.00</del>
<del>Recovery of filing fee</del>	<del>\$100.00</del>
<b>TOTAL MONETARY AWARD</b>	<b>\$1,250.00</b>

<u>Doubling of the security deposit</u>	<u>\$575.00</u>
<u>Recovery of filing fee</u>	<u>\$100.00</u>
<b><u>TOTAL MONETARY AWARD</u></b>	<b><u>\$675.00</u></b>

Conclusion

~~The Tenant is provided with a Monetary Order in the amount of **\$1,250.00** in the above terms, and 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.~~

The Tenant is provided with a Monetary Order in the amount of **\$675.00** in the above terms, and 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: March 27, 2020

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Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)  
OF THE RESIDENTIAL TENANCY ACT ON **March 27, 2020**  
AT THE PLACES INDICATED **BY UNDERLINING**  
OR USING ~~STRIKETHROUGH~~.