



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD

### 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 of the *Act*.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*.

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 provided affirmed testimony that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 17, 2020, deemed received by the landlord under section 90 of the *Act* five days later, that is, on January 22, 2020.

The tenant provided the Canada Post Tracking Numbers in support of service which are listed on the first page of this decision.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant codes for the landlord had been provided.

Rule of Procedure 7.3 states:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

Preliminary Matter – Amendment

I note that in the tenant's application, the surname of the landlords was spelt with JR and SR. However, the tenant affirmed that the correct name of the landlord's surname does not encompass the letter "H". Based on the tenant's testimony and review of the names in an email sent to the landlords submitted into evidence, I find it reasonable to amend the family name of the landlords to remove the "H" in JR and SR as indicated on the Application for Dispute Resolution.

Issues to be Decided

Is the tenant entitled to the following?

- an order for the landlord to return the security deposit pursuant to section 38 of the Act?
- an order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

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

The tenant testified that this tenancy began on June 1, 2016 and ended on May 1, 2019. Monthly rent in the amount of \$940.00 was payable each month. A security deposit of \$460.00 was paid by the tenant to the landlord which is held in Trust by the landlord. A written tenancy agreement was signed by both parties.

The tenant testified that the landlord obtained a further \$10.00 for the security deposit when the rent was increased. The tenant affirmed that a move - out inspection was not undertaken between himself and the landlord.

The tenant testified that he sent the landlord his forwarding address via text message on May 4, 2019 which was their normal method of communication. On June 7, 2019, the tenant posted a letter in the landlord's door advising of the forwarding address and sent the copy of this letter by a further text. A copy of the text and letter evidencing the forwarding address was provided.

The tenant testified that the landlord has not returned the security deposit or filed an application to retain it. The tenant affirmed that the landlord claimed there was damage incurred to the rental unit due to a pet. The tenant advised that he has never owned a pet.

The tenant requested a monetary award of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

### 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 security 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 security deposit. The tenant testified that he has not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of the tenant, I find that the landlord was served with the tenant's forwarding address in writing by text messaging on May 4, 2019 and by letter

on June 7, 2019 which was the standard practice that the parties undertook to communicate.

I find the landlord had until June 22, 2020 to return the security deposit to the tenant or file an application for Dispute Resolution Proceedings.

Based on the evidence before me, I find that the landlord did not return the tenant's security deposit within 15 days of the landlord's receipt of the forwarding address on May 4, 2019 and June 7, 2019.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double his security deposit.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$470.00
Doubling of security deposit - section 38(6)	\$470.00
Reimbursement of filing fee – section 72	\$100.00
<b>Total due to tenant</b>	<b>\$1,040.00</b>

### Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,040.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file, the order in the Provincial Court (Small Claims) to be 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: April 29, 2020

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Residential Tenancy Branch