



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes     **MNSD, FFT**

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;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 13, 2019 and deemed received by the landlord under section 90 of the Act five days later, that is, on November 18, 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on November 18, 2019.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifteen 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 code for the landlord had been provided.

I informed the tenant of the provisions of section 38 of the Act which require that the security deposit is doubled if the landlord does not return the security deposit to the

tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return double the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the parties entered into a tenancy agreement that commenced on March 1, 2018 and ended on June 30, 2019. A copy of the tenancy agreement was submitted as evidence. Rent was \$2,300.00 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security deposit of \$1,150.00 which the landlord holds. The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified that the tenant sent the landlord the tenant's forwarding address for the return of the security deposit on November 12, 2019 by regular mail. The tenant submitted a copy of the letter.

The tenant testified there was a condition inspection at the beginning of the tenancy; a copy of the report was submitted. The tenant stated that the parties had agreed to meet at the unit at 1:00 PM on June 30, 2019 for a condition inspection on moving out but the landlord did not attend. The tenant testified that she received a phone call from the landlord's agent telling her to leave the keys at the concierge as the landlord would not be attending and that the landlord would mail the security deposit back to the tenant. Accordingly, the tenant took photographs of the unit which were submitted as evidence, turned in the keys and vacated.

The tenant testified that the landlord has not returned the security deposit or filed an application to retain it. The landlord also refused to return the tenant's postdated cheques.

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 in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the Act.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the Act. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act, I find that the tenant is entitled to a monetary award of \$2,200.00 as well as reimbursement of the filing fee for a total monetary order of \$2,300.00.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$1,100.00
Doubling of security deposit - section 38(6)	\$1,100.00

Reimbursement of filing fee – section 72	\$100.00
<b>Monetary Award</b>	<b>\$2,300.00</b>

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$2,300.00** 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 02, 2020

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Residential Tenancy Branch