



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for:

- 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 filling fee, pursuant to section 72 of the Act.

Tenant MA attended the hearing and was given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord did not attend.

The tenant affirmed he sent the notice of hearing and the evidence (the materials) by registered mail to the landlord on January 06, 2020 (the tracking number is on the cover page of this decision). I find the landlord is deemed served the materials on January 09, 2020 in accordance with sections 89 (1)(c) and 90(a) of the Act.

### Preliminary Matter: Request to Amend the Application

At the outset of the hearing the tenant requested an amendment to his application to request monetary compensation for a verbal abuse suffered during the tenancy.

I find this amendment is not reasonably anticipated. Accordingly, I reject the amendment sought, in accordance with Rule of Procedure 4.2.

### Issues to be Decided

1. Is the tenant entitled to an order for the landlord to return double the security deposit, pursuant to section 38 of the Act?
2. Is the tenant entitled to an order requiring the landlord to reimburse the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained to the tenant it is their obligation to present the evidence, pursuant to Rule of Procedure 7.4.

The tenant affirmed the tenancy started on October 29, 2019 and ended on November 23, 2019. Monthly rent was 1,000.00 due on the last day of the previous month. At the outset of the tenancy a security deposit of \$500.00 was collected and the landlord still holds it in trust. The one-page written tenancy was submitted as evidence.

The tenant testified there was no authorization for the landlord to retain any balance of the security deposit and the forwarding address was provided on December 06, 2019 by registered mail (the tracking number is on the cover page of this decision).

Copies of Canada Post confirmation of delivery for the registered mail packages were provided. Text messages were also provided as evidence. On December 06, 2019 the tenant texted the landlord: "No damage at the unit. The unit was very clean. I have all evidences to approve that. I did not receive from you the legal report shows the damages or dirty. I did not sign it. So no dedication and I have to get my right completely 500cad. Otherwise I will get my right by the law."

The landlord replied on the same day: "I will hold damage deposit until fully paid for cleaning amount and repair cost of damaged floor."

### 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.

I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's undisputed testimony and documentary evidence that the tenant gave the landlord written notice of his forwarding address on December 06, 2019 and that the landlord did not return the security deposit.

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. This provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit, pursuant to section 38(4)(a) of the *Act*:

**38 Return of security deposit and pet damage deposit**

(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[...]

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Residential Tenancy Branch Policy Guideline 17 states:

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<sup>15</sup>:

- 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;

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find that the tenant is entitled to a monetary award of \$1,100.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenant's application is successful, I award the tenant the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$500.00 security deposit	1,000.00
Section 72 - Reimbursement of filing fee	100.00
<b>TOTAL</b>	<b>1,100.00</b>

### Conclusion

I grant the tenant a monetary order pursuant to sections 38 and 72 of the Act, in the amount of \$1,100.00.

This order must be served on the landlord by the tenant. 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 03, 2020

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Residential Tenancy Branch