



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for a monetary claim in the amount of \$1,261.00 for the return of double their security deposit, plus the recovery of the cost of the filing fee.

The tenant, the landlord and the daughter of the landlord CA (landlord's daughter) attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence, if the party submitted documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties.

### Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on May 1, 2019. Monthly rent was \$1,800.00 per month and was due on the first day of each month. The parties confirmed that the tenant paid a \$900.00 security deposit at the start of the tenancy.

The landlord confirmed receiving the tenant's written 1 month notice to end tenancy (notice) dated December 28, 2019 on December 28, 2019. A copy of the notice was submitted in evidence and includes the tenant's written forwarding address. There is no dispute that the tenant vacated the rental unit on February 1, 2020. There is also no dispute that the landlord has already returned \$639.00 of the tenant's security deposit by cheque dated February 11, 2020. The tenant is not waiving their right to double the return of their security deposit under the Act if they are so entitled.

The parties agreed that the tenant did not agree in writing to any deductions from their \$900.00 security deposit. The landlord stated that they deducted \$261.00 for unpaid utilities and that the tenant did not consent to any deduction from the security deposit.

The landlord's daughter stated that her mother did not purposely try to breach the Act and was hoping to come to an agreement with the tenant. Although a mutual agreement was discussed the parties were unable to reach a mutual agreement.

### Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

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

**38(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.

(6) **If a landlord does not comply with subsection (1), the landlord**

**(a)** may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[Emphasis added]

Given the above, I find the landlord failed to either claim against the tenant's security deposit or return the full security deposit of \$900.00 within 15 days of February 1, 2020, which is the end of tenancy date. Under section 38 of the Act, the landlord has 15 days to return the tenant's security deposit from the **later** of the end of tenancy or the written forwarding address and I find in the matter before me, as the written forwarding address was dated December 28, 2019, I find the later date is the end of tenancy, which was February 1, 2020. Therefore, I find the landlord had until February 16, 2020 to return the tenant's \$900.00 security deposit, and based on the evidence before me, the landlord only returned \$639.00 of the \$900.00 security deposit.

Therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their \$900.00 security deposit, less the amount returned for a total of **\$1,161.00**. This amount was reached by taking double \$900.00, which is \$1,800.00 as the penalty under section 38(6)(b) of the Act, less the \$639.00 amount returned, for a total of \$1,161.00. I note that the tenant's security deposit has accrued \$0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof.

As the tenant paid a filing fee of \$100.00 and their application was successful, I grant the tenant **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of \$1,261.00, comprised of \$1,161.00 for double the security deposit, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$1,261.00**.

**I caution** the landlord not to breach section 38(1) of Act in the future.

The landlord is at liberty to make a claim for unpaid utilities against the tenant with a deadline of two years from the end of tenancy date; however, that claim is not before me at this proceeding. As the parties were invited to ask questions during the hearing, this information is being provided based on a question asked during the hearing.

### Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$1,261.00 as indicated above.

The landlord has been cautioned to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 21, 2020

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Residential Tenancy Branch