



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via email on May 7, 2020. The landlord did not submit any documentary evidence. The landlord stated that despite being served late, he was able and willing to proceed with the scheduled hearing. No other service issues were raised by both parties. I accept the undisputed testimony of both parties and find despite being served late via email the landlord agreed and confirmed that the scheduled hearing could proceed without issue. On this basis, I find that both parties are deemed sufficiently served as per section 90 of the Act.

At the conclusion of the hearing, the tenant requested that the decision be sent to her filed email address and to her physical address by mail if possible. The landlord confirmed that although he was out of the country, the landlord was accepting mail at the physical address for the landlord noted on the tenant's application for dispute and would prefer the decision mailed.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on February 1, 2019 on a 1 year fixed term tenancy as per the submitted copy of the signed tenancy agreement dated January 17, 2019. The monthly rent was \$1,950.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$975.00 was paid. Both parties confirmed the landlord currently still holds the \$975.00 security deposit as of the date of this hearing.

The tenant seeks a monetary claim of \$2,150.00 which consist of:

\$1,950.00	Return of Original \$975.00 Security Deposit
	Compensation, \$975.00 Sec. 38(6) Fail to Comply
\$100.00	Interest
\$100.00	Filing Fee

During the hearing both parties were advised that based upon the payment date of the \$975.00 security deposit, no interest has accrued as of the date of this hearing. As such, this portion of the tenant's application is dismissed.

The tenant provided undisputed testimony that the tenancy ended on November 20, 2019. The landlord stated that he could neither dispute or confirm this date.

The tenant stated that she provided her forwarding address in writing via email on November 20, 2019 requesting the return of the security deposit. The landlord disputes this claim stating that the tenant had emailed him requesting the return of the security deposit, no actual address was provided. Both parties confirmed that that the tenant's request was for the landlord to return the security deposit via "einterac". A review of the tenant's submitted documentary evidence, "Damage Deposit Request by einterac" shows an email chain (4 messages) dated November 3, 2019 from 8:17am to 11:36am between the landlord and the tenant. A summary of the contents are:

-Tenant notifying the landlord that the new tenant has "taken over my lease.  
When can I expect my damage deposit back?

- Landlord notifying the tenant the “landlord has 15 days after the tenant has vacated to deal with the damage deposit return. Please provide your forwarding address.” Also details on the landlords expectations on the tenant returning possession of the rental unit to the landlord.
- Tenant acknowledging the email and requesting the payment via etransfer.
- Landlord acknowledging receipt of the email.

The tenant reiterated that the tenant did not give consent for the landlord to retain the security deposit nor has the landlord filed an application for dispute of its return.

The landlord stated that he received the tenant’s notice to vacate the rental unit on October 20, 2019 for November 30, 2019 and a new tenant took possession on December 1, 2019.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant’s security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence from both parties that the tenancy ended on November 30, 2019 after the tenant vacated the rental unit on November 20, 2019. Both parties confirmed that the landlord still holds the \$975.00 security deposit. Both parties confirmed the tenant did not give consent to the landlord to retain the security deposit. Both parties confirmed the landlord has not filed an application for dispute of returning the security deposit to the tenant.

The tenant claimed that she provided her forwarding address in writing via email on November 20, 2019, but the landlord has claimed that other than receiving it in the notice of hearing package via email on May 7, 2020, the landlord was never given the tenant’s forwarding address in writing. A review of the tenant’s documentary evidence files does not show an email dated November 20, 2019. A file titled, “Damage Deposit Request by einterac” was found and reviewed. This email was dated November 3, 2019 in which no actual document in writing was sent and the email contents refer only to two different requests for the landlord to return the security deposit via etransfer.

In this case, I find that the tenant failed to provide her forwarding address in writing to the landlord requesting the return of the \$975.00 security deposit. Although the tenant has claimed that it was provided in an email dated November 20, 2019, no such email file was found in the tenant's submitted documentary evidence. The landlord has disputed that at no time has the landlord received the tenant's forwarding address in writing, except for the tenant's application for dispute received via email on May 7, 2020. Another file was found, but no document or attachments were included. As noted above, a review of the 4 email exchange between the two parties only reveal that the tenant had requested the return of the security deposit via etransfer. I find that on this basis, that the tenant failed to provide her forwarding address in writing to the landlord. However as the tenancy had ended the tenant is entitled to return of the original \$975.00 security deposit.

I find in this case, that the tenant has failed to establish a claim for compensation under section 38(6) for failing to comply with the Act of returning the \$975.00 security deposit. The tenant did not provide an actual forwarding mail address in writing as required under section 38 (1) and as such, the 15 day time period has not begun.

The tenant is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$1,075.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: May 11, 2020

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Residential Tenancy Branch