



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On February 3, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail on February 3, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Landlord advised that he did not serve any of his evidence to the Tenant. As such, the Landlord’s evidence will not be accepted or considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2019 as a fixed term tenancy for one year, but it ended when the Tenant gave up vacant possession of the rental unit on November 30, 2019. Rent was established at \$1,000.00 per month and was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that he served his forwarding address in writing, by registered mail on January 13, 2020, to the Landlord's service address provided on the tenancy agreement (the registered mail tracking number is listed on the first page of this Decision). The Tenant also provided a confirmation of receipt of this package, indicating that it was signed for on January 14, 2020.

The Landlord confirmed that the address the Tenant sent the package to was his address for service, but he has a tenant that lives there and suspects that this person never provided him with that package. He did confirm that he received the Notice of Hearing package when it was served to him in the same manner, however.

The Landlord confirmed that he was still holding onto the Tenant's security deposit.

As it is the Tenant's belief that the Landlord has not complied with the *Act*, he is simply seeking a return of the security deposit pursuant to Section 38 of the *Act*. However, he elected not to request a doubling of the deposit pursuant to Section 38(6)(b).

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with

Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the undisputed evidence is that the tenancy ended when the Tenant gave up vacant possession of the rental unit on November 30, 2019 and that the Tenant provided a forwarding address in writing on January 13, 2020. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain the deposit without the Tenant's written consent.

As the Tenant served his forwarding address in writing, on January 13, 2020, to the address provided by the Landlord, and as this was accepted on January 14, 2020, I am satisfied that the Landlord was served the Tenant's forwarding address in writing on January 14, 2020. Despite the Landlord's claims that the person accepting the package did not give it to him, I am satisfied that the Landlord was negligent for this as this was the address he was using for service.

As the Tenant did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of January 14, 2020, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the deposit contrary to the *Act*.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit. However, as the Tenant did not wish to seek compensation in the amount of double the deposit, I grant the Tenant a monetary award in the amount of **\$500.00**.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$600.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord fail to comply with this Order, this 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: June 26, 2020

---

Residential Tenancy Branch