



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-DR, FFT

### Introduction

On July 14, 2020, the Tenant applied for a Direct Request proceeding seeking a Monetary Order for a return of double the security deposit and pet damage 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*.

On July 17, 2020, an Interim Decision was made, setting down this Application for a participatory hearing on August 25, 2020 at 9:30 AM.

The Tenant attended the hearing; however, the Landlord did not attend during the 40-minute teleconference. All in attendance provided a solemn affirmation.

The Tenant advised that as per the Interim Decision, he served the Notice of Hearing and evidence package to the Landlord by registered mail on July 20, 2020 (the registered mail tracking number is listed on the first page of this Decision). He stated that he served this package to the Landlord’s new address, which was provided to him by the Landlord in an email dated June 8, 2020. The tracking history indicated that this package was delivered on July 23, 2020. 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 and evidence package.

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 double the security deposit and pet damage 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.

The Tenant stated that the tenancy started on April 1, 2019 and ended when he gave up vacant possession of the rental unit on February 29, 2020. Rent was established at \$2,500.00 per month and was due on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He advised that his forwarding address in writing was provided on a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form, and this was attached to an email to the Landlord on June 8, 2020. Proof of service of this email to the Landlord's email address was submitted as documentary evidence.

He stated that the Landlord sent an email on June 26, 2020 indicating that a cheque was mailed to the Tenant on June 24, 2020. He requested that the Landlord provide a tracking number for this mail; however, the Landlord did not respond. He advised that he has not received his deposits back from the Landlord and he never gave her written consent to keep any of the deposits. As it is his belief that the Landlord has not complied with the *Act*, he is seeking a return of double the security deposit and double the pet damage deposit pursuant to Section 38 of the *Act*, in the amount of **\$5,000.00**.

### Analysis

Upon consideration of the testimony 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

The undisputed, solemnly affirmed testimony is that the Tenant's forwarding address in writing was provided to the Landlord on June 8, 2020 by email and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on February 29, 2020. I am satisfied that email service to the Landlord is a valid method to serve, based on the Director's Order dated March 30, 2020 permitting such service. Furthermore, as the email address used was the same address that the Landlord used to send an email to the Tenant that same day, I am satisfied that the Tenant's email with his forwarding address was provided to the Landlord.

As the Tenant did not provide written authorization for the Landlord to keep any amount of the deposits, and as the Landlord did not return the deposits in full or make an Application to keep the deposits within 15 days of June 8, 2020, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the deposits contrary to the *Act*.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit and double the original pet damage deposit. Under these provisions, I grant the Tenant a monetary award in the amount of **\$5,000.00**.

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

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenant**

Item	Amount
Double the security deposit	\$2,500.00
Double the pet damage deposit	\$2,500.00
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$5,100.00</b>

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$5,100.00** 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: August 25, 2020

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Residential Tenancy Branch