



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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant, the landlord, and the landlord's two agents, "landlord LT" and landlord CA ("landlord's agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 25 minutes.

The landlord's agent and landlord LT confirmed that they had permission to represent the landlord at this hearing. The landlord and landlord LT did not testify at this hearing.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Both parties confirmed that they were ready to proceed with the hearing and they had no objections.

### Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. A written tenancy agreement was signed by both parties. This tenancy began on August 1, 2013 and ended on March 1, 2020. Monthly rent in the amount of \$1,435.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant and the landlord retained \$180.00 and returned \$470.00 to the tenant, pursuant to a previous Residential Tenancy Branch ("RTB") hearing decision, dated July 9, 2020, made by a different Arbitrator. The file number for that hearing appears on the front page of this decision. The landlord filed that previous application, to retain the tenant's security deposit, on March 13, 2020. The tenant received that application on March 24, 2020. The landlord returned the above amount of \$470.00 to the tenant on July 21, 2020, which was received by the tenant on July 23, 2020. The landlord did not have written permission to keep any amount from the tenant's security deposit. The tenant provided a written forwarding address to the landlord by way of a letter sent by registered mail on February 24, 2020. The landlord confirmed receipt of the forwarding address but could not recall the date.

The tenant seeks the return of double the value of his security deposit of \$650.00, totalling \$1,300.00, plus the \$100.00 application filing fee. He said that he received a copy of the landlord's application to retain his deposit on March 24, 2020, which is outside the 15-day time period of March 1, 2020, the date his tenancy ended.

The landlord disputes the tenant's application. The landlord's agent claimed that the landlord filed her application to retain the deposit on March 13, 2020, which is within 15 days of March 1, 2020, the date the tenancy ended. He said that the landlord had no control of when the tenant received the landlord's previous RTB application because the RTB issued the notice of hearing on March 24, 2020.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities. The landlord did not have written permission to retain any amount from the tenant's security deposit. The tenancy ended on March 1, 2020 and the written forwarding address was provided by the tenant to the landlord on February 24, 2020. The landlord did not return the full deposit to the tenant, only a portion of \$470.00 was returned on July 21, 2020 and \$180.00 was retained, as per a previous RTB decision issued by a different Arbitrator on July 9, 2020. The landlord filed the previous RTB application to claim against the security deposit on March 13, 2020.

I find that the landlord filed her application on March 13, 2020, which is within 15 days of the later end of tenancy date on March 1, 2020. Regardless of when the tenant received the landlord's application, it is the filing date that is counted, not the date of receipt.

Therefore, I find that the tenant is not entitled to double the value of his security deposit from the landlord. There is no interest payable on the deposit during the period of this tenancy. I find that the tenant is only entitled to the regular return of \$650.00 from the security deposit, minus the \$180.00 portion ordered to be retained by the landlord. This leaves a balance of \$470.00, that was already returned to the tenant by the landlord within 15 days of the landlord's receipt of the previous RTB decision.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

The tenant's entire application is dismissed without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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 27, 2020

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Residential Tenancy Branch