



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT FFT

### **Introduction**

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

LM ("tenant") testified on behalf of the tenant in this hearing, while JW ("landlord") testified on behalf of the landlord. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's application and evidence package. The landlord did not submit any written evidence for this hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

### **Background and Evidence**

This fixed term tenancy began on April 18, 2019, and was to end on April 30, 2020. Monthly rent was set at \$2,950.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,475.00 for this tenancy. The tenant moved out on December 15, 2019.

The tenant's agent testified that the tenant provided their forwarding address to the landlord on the following dates: November 22, 2019, December 14, 2019, December 18, 2019, January 3, 2020, January 4, 2020, and on January 26, 2020. The landlord does not dispute that the landlord did not return the deposit until January 26, 2020.

The landlord's agent testified that although the landlord has not filed any applications for dispute resolution, the landlord felt that they had the right to withhold the deposit as the tenant ended the tenancy before the end of the fixed term, and contravened other sections of the *Act* and tenancy agreement.

### **Analysis**

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find it undisputed that the landlord had failed to return the tenant's security deposit within 15 days of receipt of the tenant's forwarding address in writing, nor did the landlord file an application for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order in an amount equivalent to the original security deposit.

I find that the tenant is entitled to recover the filing fee for this application.

### **Conclusion**

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	\$1,475.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,575.00</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: September 21, 2020

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Residential Tenancy Branch