



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- 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 affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and a documentary submission via Canada Post Registered Mail on July 8, 2020. The tenant stated that an initial documentary evidence package was served to the landlord via Canada Post Registered Mail on June 13, 2020, however the landlord disputed that no such package was served. The tenant was unable present any documentary evidence concerning service of this package despite stating that a copy of the Canada Post Receipt was in her evidence submission. Repeated attempts by the tenant were unsuccessful in identifying the documentary file title. The landlord confirmed that no documentary evidence was submitted by the landlord. I accept the undisputed affirmed evidence of both parties and find that the notice of hearing package and the subsequent documentary evidence package were sufficiently served as per sections 88 and 89 of the Act. The tenant's initial documentary evidence was excluded from consideration for lack of service.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenants seek a monetary order for \$1,250.00 which consists of:

\$1,150.00	Security Deposit
\$100.00	Filing Fee

The tenants seek the return of the \$1,150.00 security deposit paid to the landlord.

Both parties confirmed that the tenancy ended on April 15, 2020. Both parties confirmed that the tenant provided the landlord with their forwarding address for return of the security deposit via email on April 17, 2020. The tenant also stated that the landlord was also served a second time with the tenant's forwarding via Canada Post Registered Mail on April 30, 2020 via Canada Post Registered Mail. The landlord confirmed receiving the email with the tenants' forwarding address in writing, but that no package was received from Canada Post.

The tenant stated that at no time was the landlord given their consent to retain the security deposit nor are the tenants aware of an application filed to dispute its return.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) 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 and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed evidence of both parties and find that although no in writing, the landlord confirmed receipt of the tenant's forwarding address in an email on April 17, 2020. The landlord confirmed that he did not return the tenant's \$1,150.00 security deposit. As such, I find that the tenant has been successful in their request for the \$1,150.00 security deposit.

I also find pursuant to section 38(6) the landlord having failed to comply with 38(1) is liable to pay an amount equal to the security deposit to the tenants of \$1,150.00.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee.

During the hearing parties discussed a repayment plan and agreed to:

1. Landlord to pay to the tenant \$400.00 within 24 hours of the hearing date.
2. Landlord to pay to the tenant \$100.00 per month until the balance is paid.

### Conclusion

The tenant is granted a monetary order for \$2,400.00.

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: October 23, 2020

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Residential Tenancy Branch