



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a return of all or a portion of their security deposit pursuant to section 38.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing. The Notice of Hearing was confirmed to provide the correct information. The tenant attended, was assisted by a family member and advocate and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant's advocate testified that the landlord was served with the tenant's application for dispute resolution and evidence by registered mail sent on August 10, 2020. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on August 15, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a return of all or a portion of the security deposit?

### Background and Evidence

This fixed-term tenancy began in March, 2020. Monthly rent was \$1,000.00. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at anytime for this tenancy.

The tenancy ended shortly after it started in March, 2020. The tenant provided a forwarding address to the landlord in a letter dated June 30, 2020 which was sent by registered mail on or about that date. The tenant did not authorize the landlord to retain any portion of the deposit.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenant's evidence that they provided their forwarding address to the landlord by the letter dated June 30, 2020 sent by registered mail on or about that date. Pursuant to sections 88 and 90 of the *Act* I find that the landlord is deemed to have received the tenant's forwarding address on July 5, 2020, five days after mailing. I accept that the tenant has not provided written authorization that the landlord may retain any portion of the deposit. I accept the evidence that the landlord has not returned any portion of the deposit for this tenancy.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 24(2) of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of July 5, 2020, the date the landlord is deemed to have received the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,000.00 Monetary Order, double the value of the \$500.00 security deposit held by the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1000.00 against the landlord. The tenant is provided with a Monetary Order 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: November 17, 2020

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Residential Tenancy Branch