



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, 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; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The Notice of Hearing was confirmed to contain the correct information. The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that they served their application for dispute resolution and evidence on the landlord by registered mail sent on August 19, 2020. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on August 24, 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?  
Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

The tenant provided the following information. This tenancy began on May 26, 2020. The monthly rent was \$950.00 payable on the first of each month. A security deposit of

\$425.00 and pet damage deposit of \$425.00 were paid at the start of the tenancy. The tenancy ended in June, 2020. The tenant provided the landlord with their forwarding address in writing on the prescribed Residential Tenancy form dated July 17, 2020.

The landlord subsequently returned \$900.00 of the security and pet damage deposit to the tenant, unilaterally deducting \$50.00 from the deposits. The landlord noted in their message to the tenant "Refund Rent Deposit \$50 deducted for pre and post clean up". The tenant has not provided authorization that the landlord may retain any portion of the deposits. No condition inspection report was prepared at any time for this tenancy.

### 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 document dated July 17, 2020. I accept the evidence that the landlord has made partial payment but failed to return \$50.00 of the security and pet damage deposit for this tenancy. I accept that the tenant has not provided written authorization that the landlord may retain any portion of the deposit.

A landlord may not unilaterally withhold any portion of the security and pet damage deposit for cleaning or other reasons without going through the appropriate steps in accordance with the *Act*. If the landlord believed that there was cleaning that was required they ought to have filed an application for authorization to retain the portion of the deposits.

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 and pet damage deposit in full within 15 days of receiving 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 \$100.00 Monetary Order, double the value of the \$50.00 portion of the security and pet damage deposit withheld by the landlord.

As the tenant was successful in their claim they are entitled to recover their filing fee from the landlord.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$200.00 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 30, 2020

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Residential Tenancy Branch