



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

On August 27, 2020, the Tenant made an Application for Dispute Resolution seeking a return of double the damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”).

The Tenant attended the hearing; however, the Landlord did not make an appearance at any point during the 18-minute hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail on or around September 9, 2020. He did not submit any proof of service of this package; however, the Landlord submitted evidence that directly referenced this file. As such, I am satisfied from the Tenant’s undisputed, solemnly affirmed testimony and from the Landlord’s evidentiary submissions that the Landlord has been served the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act*.

The Tenant advised that he did not submit any evidence for consideration on this file.

He also stated that the Landlord served him with evidence for this file by registered mail, on or around September 29, 2020.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on November 15, 2007 and the tenancy ended when he gave up vacant possession of the rental unit on June 30, 2020. Rent was established at \$456.28 per month and was due on the first day of each month. A security deposit of \$220.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He stated that he provided his forwarding address to the agent for Landlord on July 6, 2020 by email. He submitted that the Landlord is still holding the deposit, that the Landlord has never made an Application to claim against the deposit, and that written authorization to keep any or all of the deposit was never given to the Landlord.

As the Landlord did not comply with Section 38 of the *Act* with respect to dealing with this deposit accordingly, the Tenant is seeking double the security deposit in the amount of **\$448.18**, which includes interest.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the 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 in full 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 pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the submissions before me, the consistent and undisputed evidence is that the Tenant provided his forwarding address to the Landlord's agent by email on July 6, 2020. Furthermore, the Landlord's agent submitted evidence where she noted in this documentary evidence the following: "We texted Mr kay[sic] on July 9th informing him that he would not be getting his damage deposit and would also receive a bill from us to pay for the amount exceeding the deposit."

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* that allows the Landlord to retain the deposit without the Tenant's written consent.

As I am satisfied by the Landlord's agent's response that she had the Tenant's forwarding address on or around July 9, 2020, I find that the Landlord had 15 days to either return the deposit in full or make an Application through the Residential Tenancy Branch to keep the deposit. However, the Landlord took no action at all and still holds the deposit to this day.

Based on the totality of the evidence before me, as the Tenant did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of receiving the forwarding address, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

As a result, I am satisfied that the Tenant has substantiated a monetary award amounting to double the original security deposit, plus interest. When calculating the amount of interest owed on this deposit, the Deposit Interest Calculator on the Residential Tenancy Branch website calculates the amount of interest payable for this period of time as \$3.73. Under these provisions, I grant the Tenant a monetary award in the amount of **\$443.73**.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Doubling of the security deposit	\$440.00
Interest on security deposit	\$3.73
<b>TOTAL MONETARY AWARD</b>	<b>\$443.73</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$443.73** 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: December 14, 2020

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Residential Tenancy Branch