



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, MNSD, MNDCT**

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

This periodic tenancy began in September 2018. A security deposit of \$800.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenancy ended in June 2019. The tenant submits that they provided a forwarding address in writing by a Tenant's Notice of Forwarding Address form dated March 3, 2020 posted on the rental unit door on March 4, 2020. The tenant provided a copy of the notice as well as a photograph of a notice posted on a door. The tenant submits that they have not provided written authorization that the landlord may retain any portion of the security deposit.

The landlord disputes that they were ever served with the tenant's forwarding address. submits that there was a rental arrear at the time the tenancy ended and that the rental unit required repairs and work.

### 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 evidence of the parties that this tenancy ended in June 2019. While the landlord disputes that they were ever served with the tenant's forwarding address, I am satisfied on the basis of the evidence before me including the tenant's testimony, the copy of the Notice of Forwarding Address and the photograph showing the notice clearly posted on the door of the landlord's service address, that the tenant served the landlord with their forwarding address on March 4, 2020. In accordance with sections 88 and 90 of the *Act* I find the landlord is deemed served with the tenant's forwarding address on March 7, 2020, three days after posting.

The landlord had 15 days from March 7, 2020 to either file an application for authorization to retain the deposit or return it in full to the tenant. The landlord did neither.

The landlord submits that they incurred costs due to damage to the rental unit and that there is a rental arrear. I find the landlord's submissions to be irrelevant to the matter at hand. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any portion of the security deposit.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy or sought to recover unpaid rent from the security deposit, they were required to file an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 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 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. 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 \$1,600.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,700.00. 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: January 28, 2021

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Residential Tenancy Branch