



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FFT

### Introduction

This claim originated at a direct request proceeding and was adjourned to a participatory hearing in an Interim Decision dated October 16, 2020. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

The Interim Decision stated:

I find that the PO Box number indicated on the Proof of Service Tenant's Notice of Direct Request Proceeding form does not match the landlord's address for service as established in the tenancy agreement. In a Direct Request Proceeding, I find I am not able to confirm whether the Tenant's Notice of Direct Request Proceeding was sent to the wrong PO Box or whether there was simply an error on the Proof of Service form. I find I am not able to confirm service of the Notice of Direct Request Proceeding to the landlord, and that a participatory hearing is necessary to address this issue.

The Interim Decision also ordered the tenant to serve the landlord with the Interim Decision and Notice of Reconvened Hearing.

The landlord testified that the PO Box is his correct address for service. The landlord testified that he received the Interim Decision and Notice of Reconvened hearing via registered mail. I find that the landlord was served with the above required documents in accordance with section 89 of the *Act*.

#### Preliminary Issue- Amendment

The address of the subject rental property in the tenant's application for dispute resolution contained a typo. Pursuant to section 64 of the *Act*, I amend the spelling of the subject rental city to the correct spelling.

#### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy was set to begin on September 1, 2020; however, the tenant did not move in. Monthly rent in the amount of \$1,390.00 was set to be payable on the first day of each month. A security deposit of \$695.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that on September 1, 2020 the tenant refused to move into the subject rental property following the tenant's assertion that the subject rental property was too dirty and damaged to move into. The landlord did not agree with the tenant's reasons for not moving in.

The tenant testified that on September 1, 2020 he sent the landlord a letter via registered mail that contained his forwarding address. The landlord testified that he received it approximately 10 days later.

The landlord testified that he did not file an application for dispute resolution for authority to retain the tenant's deposit. The landlord testified that he retained the security deposit because the tenant breached the contract by failing to move in on September 1, 2020.

The tenant testified that he did not provide the landlord with written authorization to retain any portion of his security deposit. This testimony was not disputed by the landlord.

### Analysis

I find that the tenant's forwarding address was served on the landlord on or around September 11, 2020, in accordance with section 88 of the *Act*.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenant's undisputed testimony that he did not provide the landlord with written authorization to retain his security deposit.

Based on the testimony of both parties I find that the landlord did not return the tenant's security deposit within 15 days of the later of the receipt of the forwarding address or the end of this tenancy. I find that the landlord has not applied for dispute resolution for authority to retain the deposit. Therefore, pursuant to section 38(6)(b) of the *Act*, the

landlord is required to pay the tenant double the value of the security deposit, in the amount of \$1,390.00.

Both parties provided testimony in the hearing regarding the end of this tenancy and the landlord provided testimony regarding the damages he suffered following the end of this tenancy. I informed both parties that I would not be rendering a decision in this hearing about any losses suffered by the landlord as the landlord has not filed a monetary claim with the Residential Tenancy Branch for any alleged losses. For this reason, a large portion of the testimony heard is not included in this decision as it has no bearing on whether or not the tenant is entitled to the return of the security deposit under section 38 of the *Act*.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee for this application for dispute resolution, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,490.00.

The tenant is provided with this 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: January 29, 2021

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Residential Tenancy Branch