



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD-DR, FFT

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord in person with the notice of hearing package on January 15, 2021. The tenant stated that she served the landlord with the submitted documentary evidence via Canada Post Registered Mail on December 18, 2020, but that the package was returned by Canada Post as "Refused". The landlord stated that he did not receive the package and stated that he did not "refuse" it. The landlord stated that he attended the local Canada Post Outlet and was not able to retrieve the package as his identification was expired and not accepted by Canada Post. The landlord stated that he did not submit any documentary evidence. I find based upon the testimony of both parties that both parties have been served as per section 89 of the Act. On the tenant's evidence submission, I find despite the landlord being unable to retrieve the package of evidence, I find that the tenant has fully complied with section 88 of the Act in service of the evidence. The landlord is deemed served. The landlord was advised that during the hearing if the tenant were to refer to a specific document the landlord would be given a detailed description of the document and an opportunity to rebut if necessary. The landlord stated that he understood.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 20, 2015 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 16, 2015. The monthly rent was \$800.00 and a security deposit of \$400.00 was paid.

The tenant seeks a monetary claim of \$500.00 for:

\$400.00	Original Security Deposit
\$100.00	Filing Fee

The tenant stated that the tenancy ended on October 31, 2020 and that the tenant provided the landlord with her forwarding address in writing in a letter dated November 16, 2020 on November 17, 2020 via Canada Post Registered Mail requesting the return of the \$400.00 security deposit. The tenant submitted a copy of a Canada Post Customer Receipt Tracking Label as "unclaimed". The landlord confirmed that he did not receive this letter. The tenant referred to the submitted photograph of the Canada Post Tracking Label and the photograph of the returned letter marked as "unclaimed". A review of the Canada Post Tracking Number confirmed that the letter sent and the envelope picture reviewed were the same.

During the hearing the landlord confirmed that he holds the \$400.00 security deposit and that it was not returned to the tenant due to damage issues. The landlord stated that he has since sold the property and no longer owns it. The landlord provided affirmed testimony that he did not file an application to dispute the return of the security deposit nor does the landlord have an order authorizing him to retain it.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

I find based upon the undisputed affirmed evidence of both parties that the tenancy ended on October 31, 2020 and that the landlord did not return the \$400.00 security deposit, nor did he file an application to dispute its return. On this basis, I find that the tenant is entitled to the return of the original \$400.00 security deposit as claimed.

I also find pursuant to section 38 (6) the landlord had failed to comply with subsection 38(1) and is liable to an amount equal to the \$400.00 security deposit.

The tenant is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$900.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: April 13, 2021

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Residential Tenancy Branch