



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

On December 14, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and a seeking to recover the filing fee pursuant to Section 38 of the *Act*.

The Tenant attended the hearing and J.W. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and some evidence to J.W. by registered mail on December 19, 2020 and J.W. confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and some evidence.

She stated that she served J.W. with additional evidence on March 26, 2021 by registered mail and J.W. confirmed that he received this evidence. Based on this undisputed evidence, I am satisfied that the Landlord was served with all of the Tenant’s evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

J.W. advised that he served the Landlord’s evidence to the Tenant by email on April 21, 2021. The Tenant confirmed that she received this evidence; however, she was not able

to open the attached documents. As a result, she was not prepared to respond to this evidence. Given that this evidence was not served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure or in a manner in accordance with the *Act*, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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?
- Is the Tenant entitled to recover the filing fee?

### 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.

All parties agreed that the tenancy started on December 1, 1991 and that the tenancy ended when she gave up vacant possession of the rental unit on December 31, 2018. J.W. was not sure how much rent was, but the Tenant advised that it was “around” \$1,650.00 per month. They agreed that rent was due on the first day of each month and that a security deposit of \$1,110.00 was also paid. There was no written tenancy agreement created for this tenancy.

All parties also agreed that the Tenant provided her forwarding address in writing to J.W. on November 23, 2018 by registered mail.

The Tenant advised that she never received her security deposit back from the Landlord and that she never provided the Landlord with any authorization to keep the deposit. She stated that she never contacted the Landlord about not receiving her deposit at any point. She submitted that she does not like confrontation and the reason she waited until the two-year statutory time limit, under Section 60 of the *Act*, to make this Application is because she had many “things going on in life.”

J.W. advised that his mother managed this tenancy until he took over managing it in April 2012. He stated that the owner of the rental unit is his brother and always has been. When he received the Tenant's forwarding address in writing, he informed his mother to return the deposit. He stated that he was “pretty sure” that his mother

returned the deposit shortly after the end of the tenancy, but he did not “follow up” to confirm if she did or not. As he never heard back from the Tenant, it was his belief that the Tenant received her deposit back. He acknowledged that the Landlord has never returned the interest owed to the Tenant based on the length of the tenancy.

As it was confirmed that the owner of the rental unit was J.W.’s brother, the name of the Landlord on the Application was amended accordingly, pursuant to the Tenant’s request.

As the Tenant believes the Landlord did not return her security deposit after being provided with her forwarding address in writing, she is requesting a monetary award of double the deposit in the amount of **\$2,220.00** pursuant to Section 38 of the *Act*. In addition, she is seeking interest on her deposit in the amount of **\$338.46**.

### 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.

With respect to the Tenant’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

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*.

Based on the undisputed evidence before me, I am satisfied that the Tenant provided a forwarding address in writing to the Landlord on November 23, 2018. Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing 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* which allows the Landlord to retain a portion of the deposit without the Tenant’s written consent.

With respect to the Tenant's claim that the security deposit was never returned, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, as noted above, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

While the Tenant claims that the Landlord did not return the security deposit after she provided a forwarding address in writing and after the tenancy ended, while there was no requirement for her to have contacted the Landlord again, I find it curious why she did not bring this to the Landlord's attention at any point after the tenancy ended. In my view, common sense and ordinary human experience would dictate that in general, a person would likely reach out to the Landlord at some point if the deposit was not returned or to inquire about the status of the deposit. At the very least, had she done so, this would be evidence to support her allegation that the Landlord did not return the deposit at all. In addition, this would demonstrate the Tenant's attempts to mitigate this issue.

Furthermore, I also find it curious why the Tenant would have waited until almost the last possible point that she could have filed this Application. Given that she had been waiting on the return of her deposit as she claimed, had she not received her deposit back, she could have made this Application well before the two-year time period had approached. In fact, she could have made this application as early as January 16, 2019. By waiting until the last possible moment, without any inquiry to the Landlord about her security deposit, I find that this causes me to question the legitimacy of this claim. Given that there is insufficient evidence to support that the security deposit was not returned by the Landlord after the tenancy ended, and as the burden is on the Tenant to prove this, I do not find that the Tenant has provided compelling or persuasive evidence to support her claims. As a result, I dismiss her claim for a return of the deposit in its entirety.

However, as the undisputed evidence is that the Landlord has not returned interest owed on the deposit to the Tenant, I grant the Tenant a monetary award in the amount of **\$338.46** to satisfy this debt.

Even though the Tenant was only partially successful in these claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 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**

Security deposit interest	\$338.46
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$438.46</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$438.46** 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: April 23, 2021

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Residential Tenancy Branch