



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

On January 4, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of a security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenant appeared at the hearing; however, the Landlord did not. The line remained open while the phone system was monitored for twenty minutes and the Landlord did not call into the hearing during this time.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding using registered mail sent to the Landlord’s address on January 31, 2021. The Tenant provided a copy of the registered mail receipt.

I find that the Landlord was served notice of the hearing in accordance with sections 89 and 90 of the Act and failed to attend. The hearing proceeded.

The Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began on August 15, 2019 and ended on April 30, 2020. Rent in the amount of \$850.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00. The Tenant provided a copy of the tenancy agreement. The Tenant testified that the security deposit was paid in cash to the Landlord and the Landlord failed to provide him with a receipt.

The Tenant testified that the Landlord did not return the security deposit to him after the tenancy ended. The Tenant testified that the Landlord said he was going to keep the security deposit as payment because the Tenant had a guest stay over in the unit.

The Tenant testified that there was no written agreement that the Landlord could retain any amount of the security deposit.

The Tenant testified that he provided the Landlord with his forwarding address in writing on May 2, 2020 by placing it in the Landlord's mailbox at the dispute address. The Tenant testified that the Landlord lives in the upper part of the home.

### Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenants forwarding address in writing, the landlord must repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenant provided his forwarding address to the Landlord on May 2, 2020. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no written agreement that the Landlord could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of \$950.00. I grant the Tenant a monetary order in the amount of \$950.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit and the cost of the filing fee. I grant the Tenant a monetary order in the amount of \$950.00.

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: May 31, 2021

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Residential Tenancy Branch