



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR- FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant to obtain monetary compensation for the doubled amount of the security deposit (the deposit) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenant on June 15, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on July 3, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 3, 2022 and are deemed to have been received by the landlord on July 8, 2022, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for doubling of the security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$6,000.00 and a security deposit of \$6,000.00, for a tenancy commencing on March 1, 2020
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlord by e-mail at 11:15 pm on March 1, 2022
- A copy of an e-mail sent to the landlord on March 1, 2022, containing the tenant's forwarding address and a copy of a reply e-mail from the landlord dated March 4, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenancy ended on March 1, 2022

### Analysis

The tenant has indicated that, as the landlord collected a deposit greater than half a month's rent, the landlord must repay the tenant double the amount of the deposit. The tenant states this is in accordance with part 4, section B, subsection 1 of the residential tenancy agreement.

The relevant section of the tenancy agreement submitted by the tenant states that

*"If a landlord does not comply with subsection (1), the landlord...  
b) must pay the tenant double the amount of the security deposit, pet  
damage deposit, or both"*

Subsection (1)(a) of the agreement states that the amount of the security deposit must not exceed one half of the monthly rent payable.

However, I note that the tenancy agreement form has since been updated by the Residential Tenancy Branch to clarify this section. The new agreement form, available from the Residential Tenancy Branch website states that the doubling provision only applies *"If a landlord does not comply with subsection (1)(c)"*

Subsection (1)(c) of the agreement discusses the landlord's obligation to either return the deposit (less any authorized deductions) or file an application requesting to keep the deposit within fifteen days.

When the information contained within a tenancy agreement conflicts with the information in the *Residential Tenancy Act*, the *Act* will prevail.

Section 19(2) of the *Act* states that if a landlord accepts a security deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

I find there are no provisions in the *Residential Tenancy Act* that would require the landlord to pay double the amount of the deposit for overcharging.

For these reasons, the tenant's application for the doubling provision of the security deposit is dismissed with leave to reapply.

I note the tenant states the landlord returned the security deposit but did not indicate when the deposit was returned. If the landlord did not return the deposit within fifteen days, in accordance with section 38(1) of the *Residential Tenancy Act*, the tenant may be entitled to reapply for dispute resolution requesting the doubling of the security deposit.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the tenant's application for a Monetary Order for double the amount of the security deposit with leave to reapply.

I dismiss the tenant's application to recover the filing fee paid for this application without leave to reapply.

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: July 22, 2022

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Residential Tenancy Branch