



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-DR, FFT

### Introduction

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

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

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 1, 2021 and ended on February 28, 2022. The tenant was obligated to pay \$1650.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$825.00 security deposit and a \$825.00 pet deposit. The tenant testified that she provided her forwarding address on January 27, 2022. The tenant testified that the fixed term tenancy ended early as it had become unsafe for her to remain with her former boyfriend and was fleeing domestic violence. The tenant testified that she provided the appropriate form; RTB -49 that was signed by a relationship therapist to corroborate the reason for ending the tenancy. The tenant testified that the landlord has refused to return the deposits. The tenant is seeking the return of double her deposits  $\$825.00 + \$825.00 \times 2 = \$3300.00$ . The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that he was shocked to learn that the tenant wanted to end the tenancy so quickly. The landlord testified that the tenants had presented themselves as an established couple and chose them over another individual. The landlord questions the scope of violence and type alleged. The landlord disputes that the tenant should be entitled to anything.

### Analysis

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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

In the landlords own testimony, he confirmed that he had not returned the deposits, filed an application to retain the deposit nor did he have an order from the Branch to retain it. Based on the above, and the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposits in the amount of \$3300.00. The tenant is also entitled to the recovery of the \$100.00 filing fee for a total award of \$3400.00.

The tenant advised that she was told by the landlord that she owed \$299.45 for unpaid utilities. The tenant testified that she had not seen the bill but would take responsibility for that amount and should be deducted from any award given to her, accordingly the final amount owing to the tenant is \$3100.55.

### Conclusion

The tenant has established a claim for \$3100.55. I grant the tenant an order under section 67 for the balance due of \$3100.55 This order may be filed in the Small Claims 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 03, 2023

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Residential Tenancy Branch