



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, MNSD, OLC

### Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- 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 tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant, the landlord did not submit any documentary evidence for this hearing. Both parties gave affirmed testimony.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result 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?

Is the tenant entitled to have an order requiring the landlord comply with the *Act*, regulation or tenancy agreement?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on June 1, 2015 and ended on May 31, 2016. The tenants were obligated to pay \$1625.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$852.00 security deposit. The tenant testified that move in or move out written condition inspections were not conducted. The tenant testified that she provided her forwarding address in writing on May 25, 2016. The tenant testified that she received \$782.00 of her deposit by e-transfer on June 16, 2016. The tenant testified that she did not authorize any deductions from her security deposit. The tenant is seeking the return of double her deposit minus the amount already returned and the recovery of her filing fee.

The landlord gave the following testimony. The landlord testified that he did not dispute the tenants' testimony. The landlord testified that he did receive the tenants' forwarding address on May 25, 2016. The landlord testified that "I admit that I did wrong on the protocol as I was a bit unorganized but I was only one day late in returning the deposit". The landlord testified that he withheld the \$70.00 from the deposit for carpet cleaning and the removal of some items that were left behind.

### 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.**

Based on the evidence before me and the landlords own testimony, I find that the landlord did not comply with section 38 of the Act by not returning the security deposit within 15 days as outlined above. In addition, I further find that the landlord did not have the authorization of the tenant or an order from the Branch allowing him to withhold any portion of the deposit. Based on the above I find that the tenant is entitled the return of double the security deposit minus the amount she has already received -  $\$852.00 \times 2 = \$1704.00 - \$782.00 = \$922.00$ .

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

#### Conclusion

The tenant has established a claim for \$1022.00. I grant the tenant an order under section 67 for the balance due of \$1022.00. 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, 2017

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Residential Tenancy Branch