



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call, provided direct testimony and made submissions. The landlord's agent/daughter, G.C. appeared on his behalf. Both parties confirmed the tenant served the landlord with the notice of hearing package via mail. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed the landlord served the tenant with the landlord's submitted documentary evidence via Canada Post Registered Mail on January 25, 2019, but was returned to the sender as "unclaimed". The tenant clarified that he was out of the country and that his spouse had attempted to claim the package, but was prevented from doing so by Canada Post. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act. Although the tenant was unable to claim the package, I find that the tenant has been sufficiently served as per section 90 of the Act despite not being able to claim it.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and recovery of the filing fee?

### Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2017 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 9, 2017. The monthly rent was \$700.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$350.00 was paid.

The tenant seeks a clarified monetary claim of \$800.00 for:

\$350.00	Return of Original Security Deposit
\$350.00	Compensation, Fail to Comply, Sec. 38(6)
\$100.00	Recovery of Filing Fee

Both parties confirmed that the tenancy ended on September 12, 2018 and that the landlord received the tenant's forwarding address in writing for the return of the \$350.00 security deposit via Canada Post Registered Mail on October 31, 2018. The tenant provided copies of:

Letter dated October 31, 2018 re: request for return of security deposit  
Print out of Canada Post Online Tracking re: letter dated October 31, 2018  
Canada Post Receipt re: Registered Mail dated October 31, 2018

Both parties acknowledged that the letter dated October 31, 2018 was for a request for a \$325.00 security deposit. The tenant had clarified in his application that this was a typographical error. Both parties confirmed that the security deposit paid by the tenant in this tenancy was for \$350.00.

The landlord confirmed that the \$350.00 security deposit was still held by the landlord; and that the landlord has not applied for dispute of returning the security deposit within the allowed 15 day period. The landlord did argue that verbal permission was granted by the tenant for the landlord to retain the security deposit. The tenant disputed this claim. The landlord stated that there was no proof/evidence of this verbal agreement.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord

is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed evidence of both parties that the tenancy ended on September 12, 2018 and that the \$350.00 security deposit was not returned by the landlord to the tenant as of the date of this hearing. The landlord also confirmed that the tenant's written request for return of the security deposit and providing a forwarding address in writing for its return was received via Canada Post Registered Mail.

As for the landlord's claim that verbal permission was given by the tenant, this was disputed by the tenant and the landlord was unable provide sufficient evidence of this agreement.

I find on a balance of probabilities that the tenant has established a claim for \$800.00 as claimed by the tenant. This consists for return of the original \$350.00 security deposit, \$350.00 as compensation for the landlord failing to comply with the Act under section 38 (6) and recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$800.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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 01, 2019

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Residential Tenancy Branch