



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNSD          Monetary Order for the Return of the Security Deposit

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both the landlord and the tenant appeared along with representatives and each gave affirmed testimony.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?

- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof is on the applicant tenant.

### **Background and Evidence**

The tenant testified that the tenancy began in February 2005 at which time a deposit of \$337.50 was paid. Submitted into evidence was a copy of a decision and an Order of Possession in favour of the landlord from a previous dispute resolution hearing held on August 5, 2008 in which the tenant's application to cancel a Notice to End Tenancy was unsuccessful, as was the tenant's subsequent request for review consideration. The tenant testified that although the tenancy was ended on August 21, 2008 pursuant to the Order of Possession, rent was paid in full for the month of August 2008 for use and occupancy only. The tenant testified that the tenant had submitted a forwarding address to the landlord at the end of the tenancy. However, the security deposit was not returned within the required 15 days, nor did the landlord make an application to retain the deposit within 15 days of receiving the address. The tenant is seeking compensation of double the security deposit under section 38(6) (b).

The landlord submitted evidence indicating that rent was owed for the month of July 2008 and photographs illustrating alleged damages to the unit. The landlord acknowledged that after the forwarding address was received, no application for dispute resolution to keep the deposit was made within 15 days. The landlord's defense to the tenant's claim was that the landlord should still be entitled to retain the deposit based on the fact that the tenant owed rent and damages to the landlord. The Landlord testified

that rent was found to be owed at the previous hearing and this was the basis for the issuance of the Order of possession.

### **Analysis**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit does not exist.

However, a landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord first obtains an order to retain the amount. However, in order to make a claim against the deposit, the application for dispute resolution must be filed within 15 days after the forwarding address was received.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In regards to the landlord's own claim of damages and rent owed, I acknowledge the Dispute Resolution Officer's findings in the decision dated August 5, 2008 that the Notice based on the rent owed was valid because the tenant had failed to dispute the notice. These findings stand. However, despite any rent being validly owed to the landlord, I am able to neither hear nor consider a monetary claim by the landlord during these proceedings as the matter before me was convened to deal with the *tenant's* application under section 38 of the Act, and was not an application filed by the landlord.

That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the security deposit that was wrongfully retained by the landlord, in the amount of \$675.00 plus interest on the original deposit of \$10.96. I also find that the tenant is entitled to be reimbursed for the \$50.00 fee paid to file this application.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$735.96 and I hereby issue a monetary order for this amount in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

October 23, 2008

Date of Decision