



# Dispute Resolution Services

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

## Decision

Dispute Codes: MNSD, FF

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double his security deposit, accrued interest and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

### Issue(s) to be Decided

1. Whether the landlord had a legal right to retain the tenant's security deposit.
2. Tenant's entitlement to return of double the security deposit.
3. Mutually agreeable terms to resolve this matter.
4. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony from the parties I make the following findings with respect to the tenancy. The tenancy commenced October 1, 2008 and the tenant was required to pay rent of \$715.00 per month. The tenant paid a \$350.00 security deposit on October 2, 2008. On October 29, 2008 the landlord and tenant signed a *Mutual Agreement to End a Tenancy* with an effective date of October 31, 2008. The tenant vacated the rental unit on October 31, 2008. The tenant provided his forwarding address to the landlord on October 31, 2008 which the landlord transcribed on to a piece of paper. The tenant did not authorize the landlord to retain his security deposit.

The landlord acknowledged that she is aware of the 15 day time limit with respect to security deposits; however, the landlord expressed that she was of the impression she and the tenant would resolve the issue between themselves. The landlord confirmed that she did not repay the security deposit or make an application for dispute resolution to retain the security deposit. The landlord was of the position that by way of mutually ending the tenancy, the tenancy agreement was terminated and the tenant gave up his right to return of his security deposit. The landlord was also of the position that she was entitled to loss of rent and damages.

The parties were provided the opportunity to converse freely with one another during the hearing and a mutual agreement was reached between the parties. The tenant agreed to waive his right to double the security deposit and accept payment of the security deposit, plus interest owed on the deposit, plus the cost of the filing fee from the landlord in exchange for the landlord's agreement to not make any future claim against the tenant with respect to the tenancy. The landlord accepted the terms proposed by the tenant. The parties requested that I reflect their mutual agreement in my decision.

### Analysis

Section 38 of the Act provides for the return of a security deposit. I have reproduced subsections 38(1) and 38(6) below:

**38** (1) 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.

(6) 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.

Residential Tenancy Policy Guideline 17: *Security Deposits* provides, in part,

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *whether or not the landlord may have a valid monetary claim.*

I place emphasis on the ability to specifically waive the right to doubling of the deposit in the above excerpt from the policy guideline as I am satisfied that in reaching the mutual agreement, the tenant specifically waived his right to doubling of the security deposit. Therefore, I accept the terms reached between the parties and make it binding upon both parties.

In recognition of the mutual agreement reached between the parties, the tenant is provided a Monetary Order for return of the security deposit, accrued interest and the

filing fee in the total amount of \$400.46. Also in recognition of this mutual agreement the landlord is precluded from filing any future application against the tenant with respect to this tenancy.

Conclusion

The parties reached a mutual agreement to resolve this matter. The tenant is provided with a Monetary Order in the amount of \$400.46 in recognition of the mutual agreement.

January 7, 2009

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Date of Decision

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Dispute Resolution Officer