



# 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 and Pet Damage 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 and the pet damage 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 portion of 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.

### **Background and Evidence**

The tenant submitted into evidence, proof of registered mail sent and a copy of a letter dated November 1, 2008 addressed to the landlord containing the tenant's forwarding address and asking for the return of the security deposit. Also submitted into evidence by fax was a written statement from the landlord. However these documents were not served on the other party as required and they were not given consideration during the hearing. However, verbal testimony was given by the landlord and the tenant on the issue of the deposit.

The tenant testified that the tenancy began in June, 2008, at which time a deposit of \$300.00 was paid and the tenancy ended on November 1, 2008 at which time a forwarding address was furnished to the landlord. The tenant testified that the landlord did not return the security deposit but retained it without having the tenant's signed authority to do so.

The landlord testified that the tenant's rent was paid to the landlord directly by the Ministry and the \$300.00 deposit was also paid by the Ministry. The landlord acknowledged that the landlord did not refund the deposit to the tenant nor make an application to keep it within 15 days of receiving the address. The landlord testified that the deposit was repaid to the Ministry on November 14, 2008.

The landlord testified that the tenant vacated the unit with less than twenty-four hours notice instead of the one-month notice required under the Act. The landlord testified that due to the short notice the landlord is actually owed a month's rent by the tenant.

### **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.

Without the tenant's written agreement, a landlord can only keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord 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, I am not able to hear nor consider the landlord's claim during these proceedings as this hearing was convened to deal with the *tenant's* application under section 38 of the Act. 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 \$600.00 plus interest of \$0.78.

In regards to the landlord's presumption that the deposit is to be returned to the ministry, this is not accurate. I find that the tenancy was between the tenant and the landlord and the Ministry was not a party to the tenancy agreement and has no status nor liability in the contract. The tenant's relationship with the ministry is not one in which the landlord has any status beyond being the designated recipient of funds released by the Ministry on the tenant's behalf.

In regards to the landlord's claim for loss of rent due to the tenant's violation of the Act, I note that this hearing can only deal with the tenant's application, under section 38 of the Act. The landlord did not make a cross application and therefore cannot be heard at these proceedings in regards to a monetary claim against the tenant. The landlord is at liberty to make its own application for dispute resolution under the Act.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$650.78 comprised on double the security deposit of \$300.00, interest on the original deposit and the fee paid by the tenant for this application. and 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.

February 9, 2009

Date of Decision

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Dispute Resolution Officer