



# 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 return of double the security deposit and recovery of the filing fee. Both parties were represented at the hearing. Both parties had an opportunity to be heard and respond to other party's submissions.

The landlord provided late evidence that was not served upon the tenant and I have not considered the landlord's documentary evidence. The tenant did not provide any documentation as evidence for the hearing either. Therefore, this decision is based upon the affirmed testimony of both parties.

### Issue(s) to be Decided

1. Whether the landlord had the legal right to retain the tenant's security deposit.
2. Whether the landlord is obligated to pay the tenant double the security deposit.
3. Damages the tenant agrees to pay.
4. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony of the parties, I find the following relevant facts concerning the tenancy. The tenancy commenced in April 2007 and the tenant had paid a \$725.00 security deposit on April 18, 2007. The tenancy ended November 30, 2008. The landlord and the tenant's boyfriend participated in an inspection of the property on December 9, 2008. The landlord was provided with a forwarding address

for the tenant in writing on December 9, 2008. The landlord and the tenant's representative agreed upon the condition of the rental unit at the end of the tenancy.

The tenant testified that her boyfriend had agreed to compensate the landlord \$250.00 on her behalf during the move-out inspection. The forwarding address provided to the landlord is her boyfriend's parent's house and the tenant has not to date received the balance of her security deposit. The tenant testified that she made several calls to the landlord and visited the landlord's office in an effort to obtain the remainder of her security deposit before making this application.

The landlord testified that the tenant's boyfriend had consented to deductions of \$51.00 for the garage opener, \$40.00 + GST for cleaning, and \$100.00 for carpet cleaning during the move-out inspection; however, the landlord needed to obtain an estimate from their handyman for the remainder of the repairs required. The landlord testified that upon receiving all of the invoices for the repair work, on February 20, 2009 the landlord mailed the tenant a cheque for \$309.36 (\$290.50 security deposit plus \$18.86 in interest) to the forwarding address provided. In calculating the refund cheque, the landlord deducted \$434.50 in damages.

Upon enquiry, the landlord could not confirm that the refund cheque had been cashed. The tenant affirmed that she had not received any refund cheque and that she had just spoken with her in-laws yesterday and was not told of any mail that had arrived for her.

### Analysis

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages. The landlord did not provide sufficient evidence to prove that the tenant, or the tenant's representative, had authorized deductions of \$434.50 from the security deposit.

Therefore, the landlord did not have the legal right to withhold \$434.50 from the security deposit.

Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

I find that the landlord received a forwarding address in writing on December 9, 2008 meaning the landlord had until December 24, 2008 to either repay the security deposit, less consented deductions, to the tenant or make an application for dispute resolution.

Since the landlord did neither of these two options by December 24, 2008 I find that the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

I am satisfied that the tenant's representative had consented to deductions totaling \$250.00 and I have deducted \$250.00 from the security deposit in calculating the monetary award to the tenant.

As the tenant was successful with this application, the tenant is awarded the filing fee paid for making this application. The Monetary Order I provide to the tenant has been calculated as follows:

Double security deposit (\$725.00 - \$250.00 x 2)	\$ 950.00
Interest on original deposit to today's date	18.68
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u><u>\$ 1,018.68</u></u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant is awarded a Monetary Order in the total amount of \$1,018.68.

March 24, 2009

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Date of Decision

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Dispute Resolution Officer