



# Dispute Resolution Services

Residential Tenancy Branch  
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 landlord/respondent to show why the deposit was not or should not be returned in accordance with the Act.

### **Background and Evidence**

The tenancy began on June 1, 2008 with rent set at \$2,185.00 per month and at which time a security deposit was paid in the amount of 1,092.50. A move-in condition inspection report was completed at the start of the tenancy. The tenancy ended on December 31, 2008, and although a move-out inspection was initiated, the report was never completed and signed by both parties.

The tenant testified that the forwarding address was provided to the landlord near the end of the tenancy in December 2008. The tenant testified that the deposit was never returned. The tenant testified that the tenant did not give the landlord written permission to keep the deposit and the landlord did not refund the deposit nor make an application to keep it 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 into evidence a copy of an invoice showing a deposit paid on July 1, 2008 of \$1,092.50 with interest, listing expenses incurred by the landlord in the amount of \$3,095.11. Also submitted into evidence was a covering letter to the tenant dated February 11, 2009. The landlord's evidence included a copy of the move-in condition inspection report signed by both parties along with the move out condition inspection report signed only by the landlord, and an "*End of Tenancy...Resume of*

Costs” showing that the tenancy ended on December 31, 2008 and showing the tenant’s forwarding address.

The landlord testified that the tenant had left substantial damages and that expenses were incurred by the landlord. The landlord testified that the move-out condition inspection was thwarted by non-cooperation from the tenant.

The landlord also testified that the tenant’s forwarding address had not been confirmed. The landlord acknowledged that the landlord did not make an application for dispute resolution to keep the deposit within 15 days. The landlord stated that he was not aware of the fifteen-day limit to either return the deposit or to file a claim against the deposit and therefore the landlord had unwittingly delayed making an application for damages and losses against the tenant. However, according to the landlord, an application has now been made and has yet to be scheduled. Unfortunately, by the time the landlord sought to make an application, it was already past the fifteen-day deadline under the Act. Notwithstanding the above, the landlord’s position during the hearing was that, in fairness, he should still be entitled to retain the deposit based on the fact that the landlord suffered genuine damages and loss that can be proven.

### **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 merely keep the deposit does not exist. A landlord can also retain the deposit to satisfy a liability or obligation of the tenant if the landlord already has an order permitting the landlord to retain the deposit. However, in order to retain the deposit once the tenancy ends, the landlord must file the application for dispute resolution 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 an application for dispute resolution to obtain an order to keep the deposit within the time frame permitted to do so.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or by making application to retain the deposit 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 claims relating to damages, I am not able to hear nor consider the landlord's claim during these proceedings as this hearing was convened solely 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 the claims in a separate application if the landlord wants pursue compensation for damages and loss under 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 security deposit of \$1,092.50 that was wrongfully retained by the landlord, totalling \$2,185.00, interest of \$9.58 and the \$50.00 paid to file this application.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings hereby issue a monetary order for \$2,244.58 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.

April 2009

Date of Decision

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Dispute Resolution Officer