



# 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 to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord. Both parties attended and gave 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 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 in establishing that the deposit was paid and that a written forwarding address was provided is on the applicant/tenant. The burden of proof regarding the right to retain the security deposit is on the respondent/landlord.

### **Background and Evidence**

According to the testimony of both parties, the tenancy began on March 1, 2009 ended on April 1, 2009, with rent set at \$450.00 per month due on the 1st day of each month. No copy of any written tenancy Agreement was in evidence. The tenant stated that a security deposit of \$225.00 was paid along with the rent for March. The landlord stated that the tenant only paid \$100.00 towards the security deposit in addition to \$450.00 rent for March.

The tenant testified that, after he had already paid the rent and deposit for March, he asked the landlord to sign a shelter information form so that he could receive social assistance while looking for work but the landlord refused to sign the form. . The tenant submitted a copy of a completed “shelter information” form from the Ministry of Housing and Social Development. However, in the section labeled “*Landlord Information*” no data was written, nor was there any signature from the landlord. At the bottom of the form, the receipt portion was dated March 1, 2009 and contained the tenant’s name, the amount of rent and deposit, but no signature in the space marked, “*Landlord’s Signature*”.

The tenant testified that the tenancy suddenly ended on April 1, 2009 due to the landlord’s refusal to sign the form. The tenant testified that he had given the landlord a written forwarding address sometime in April 2009. No copy of this document was submitted and the landlord disputed ever having received the forwarding address from the tenant.

The landlord stated that the landlord had signed a shelter information form for the tenant, but the tenant subsequently returned with another form showing a higher amount of rent and deposit than was being charged, which the landlord then refused to sign.

Each party alleged that the other was not truthfully representing the facts.

**Analysis : Claim for Return of Security Deposit**

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 retain a security deposit if the tenant gives written permission at the end of the tenancy. 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 could possibly be given an order to retain the deposit to satisfy a liability or obligation of the tenant. This would require that the landlord, after the end of the tenancy, makes an application for dispute resolution and successfully obtains an order to retain the amount. In order to make a claim to keep the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

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.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit. However, I also find that the tenant has not submitted sufficient proof of the date that a written forwarding address was given to the landlord. There was no copy of the written notification submitted into evidence. I find that, without an address for the tenant, the landlord was unable to return the deposit and could not possibly have served the tenant with an application for dispute resolution seeking an order to keep the deposit.

That being said, the address of the tenant was finally provided with this application. I find that, other than the tenant's verbal testimony, which is being disputed by the landlord, there was no evidence offered to prove that a \$225.00 deposit was ever paid by the tenant. As the landlord has conceded that \$100.00 deposit was paid, I am able to issue a monetary order against the landlord for \$100.00 for the return of the deposit.

In regards to the landlord's own claim that the tenant failed to give adequate notice and that the landlord incurred a loss as a result, I find that this claim can not be heard nor

considered as this hearing was convened to deal with the *tenant's* application under section 38 of the Act. The landlord did not make a cross application. That being said, I must point out that the landlord is at liberty to make a separate application to claim damages if the landlord feels that compensation is warranted 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 refunded the security deposit of \$100.00 retained by the landlord.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$150.00 comprised of the deposit of \$100.00 and the \$50.00 fee paid for this application. I hereby issue a monetary order for \$150.00 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.

August 2009

Date of Decision

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Dispute Resolution Officer