



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Hearing 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 double the return of the security deposit of \$425.00 retained by the landlord and for a rent abatement for services and facilities not provided under the Act. The total claim was \$1,500.00.

The tenant and the landlord participated in the hearing by telephone. Both parties 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. Although the tenant's application also included a request for rent abatement for problems during the tenancy, the tenant advised that they were no longer seeking compensation for the deficiencies during the tenancy.

The remaining 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 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?
- 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?

The burden of proof regarding the right to retain the security deposit is on the respondent landlord.

### **Background and Evidence**

The tenancy began on March 15, 2009 with rent set at \$850.00 per month due on the 1st day of each month. A security deposit of \$425.00 was paid. A copy of the tenancy Agreement was in evidence. The tenancy ended on August 15, 2009. The tenant testified that the forwarding address was submitted to the landlord on July 3, 2009. However, the deposit was not returned.

The landlord testified that the forwarding address was delayed because it was not found in the mail. However, according to the landlord, efforts were made to promptly return the deposit personally to the tenants at their place of employment without success.

### **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 give 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.

However, a landlord could be able to retain the deposit to satisfy a liability or obligation of the tenant only if, after the end of the tenancy, the landlord has made an application for dispute resolution and successfully obtains an order retain the amount. However, in order to make a claim against 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, which ever is later. 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.

Given the above, I find that under section 38, the tenant is entitled to be paid double the portion of the security deposit or \$425.00 that was wrongfully retained by the landlord, in the amount of \$850.00.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$900.00 comprised of \$850.00 for double the deposit and the \$50.00 paid by the tenant for the application. I 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.

January 2010

Date of Decision

---

Dispute Resolution Officer