



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD FF

### **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 retained by the landlord.

Both the landlord and the tenant appeared and each gave testimony.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord and the issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act.

### **Background and Evidence**

Both parties acknowledged that the deposit of \$1,00.00 was paid when the tenancy began in March 2010 but was not refunded after the landlord received the tenant's forwarding address on February 28, 2011. Submitted into evidence by the tenant was a copy of the tenancy agreement, written testimony from the tenant and witnesses, copies of communications, a copy of a receipt for the carpet cleaner rental and a CD.

The tenant testified that despite receiving the tenant's forwarding address, the landlord did not refund the deposit nor make an application to keep it within 15 days of receiving the forwarding address. The tenant is seeking compensation of double the security deposit under section 38(6)(b).

### **Analysis**

Security deposits are funds held in trust by the landlord for the tenant. I find that section 38 of the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant dated at the end of the tenancy, then the landlord's right to merely keep the deposit does not exist.

However, at the end of a tenancy, a landlord is at liberty to make an application for dispute resolution seeking to keep the deposit to satisfy a liability or obligation of the tenant. In order to make such a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the tenancy ended and the forwarding address was received. Based on the evidence and the testimony, I find that the tenant did not give 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.

The landlord had submitted a substantial amount of evidence. However, I am not able to hear nor consider evidence with regard to any claims by the landlord relating to damages and loss because 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 still at liberty to make a separate application if the landlord decides 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 \$1,000.00 security deposit wrongfully retained by the landlord.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to \$2,050.00 comprised of \$2,000.00 for double the security deposit and the \$50.00 paid to file this application.

### **Conclusion**

I hereby issue a monetary order for \$2,050.00 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 07, 2011.

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Residential Tenancy Branch