



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an application by the tenant for a double recovery of the security deposit. Both the tenant and the landlord participated in the teleconference hearing.

The tenant submitted evidence to the landlord by email, which the landlord stated she did not receive because she no longer has access to that email account. I therefore did not admit or consider the tenant's evidence in this matter.

### Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

### Background and Evidence

The tenancy began on September 1, 2009. The tenant paid a security deposit of \$625 at the outset of the tenancy. The tenancy ended on February 28, 2011. On that date, the landlord and the tenant carried out a move-out inspection. At that time, the landlord stated that she intended to retain the security deposit to pay for damages done by the tenant. The landlord wrote a note that stated "I [landlord] will be holding the damage deposit of \$625 for the replacement/instal of the closet door." The landlord and both tenants initialed below this note. The landlord acknowledged that the tenants stated at that time that they disputed the damages and they would be taking up the matter of their security deposit with the Residential Tenancy Branch.

The tenant testified that she wrote a note above the landlord's note which indicated that they did not agree with the landlord keeping the security deposit, as she disputed the damage alleged.

The landlord did send a cheque to the co-tenant for the amount of the security deposit, but when she learned that the tenants had applied for double recovery of the deposit, she put a stop payment on the cheque. The landlord's position was that the tenants

had agreed to let the landlord keep the security deposit because they initialed her note. The landlord did not apply for dispute resolution to keep the security deposit.

### Analysis

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution, unless the tenant has agreed in writing to allow the landlord to keep the security deposit. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

Although I could not consider the tenant's documentary evidence regarding the initialed note, I accept her testimony that she did write a note above the landlord's note, indicating that they disagreed with the landlord keeping the deposit. Further, according to the landlord's own testimony she was aware when the tenants signed the note that they were going to dispute it. Finally, and most conclusively, the note does not amount to the tenants' consent for the landlord to keep the security deposit, it is only a declaration by the landlord that she intends to keep the deposit. I therefore find that the tenants did not agree in writing to allow the landlord to keep the security deposit.

I further find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenant has established a claim for double recovery of the security deposit, in the amount of \$1250. The tenant is also entitled to recover the \$50 filing fee for this application.

### Conclusion

I grant the tenant an order under section 67 for the balance due of \$1300. This order may be filed in the Small Claims Court 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 21, 2011.

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Residential Tenancy Branch