



# 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 return of double the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy began August 2010 and ended August 2011 with monthly rent of \$700.00 and the tenant paid a security deposit of \$350.00.

The tenant testified that in June 2011 the landlord gave him verbal notice that she wanted the rental unit for a sick relative. The tenant stated that he was not provided with a copy of the notice to end tenancy for landlord's use of property until July 31, 2011 when his mother asked the landlord for a copy and went to the landlord's house to pick up a copy of the notice.

The landlord testified that the tenant had been provided with the notice to end tenancy for landlord's use of property on March 30, 2011 and that she had given the tenant 3 months to vacate.

The tenant stated that he had paid the July 2011 rent in cash but that the landlord had not provided him with a receipt and had never provided him with receipts. The tenant stated that he had left the rent money on the inside steps as usual for the landlord to pick up. The tenant said that he could provide proof that his mother gave him the \$700.00 rent money but had no additional evidence that it was ever received by the landlord. The landlord stated that the tenant had not in fact paid the July 2011 rent and that she had no idea if someone else had taken the July rent money but that it was not left for the landlord.

The tenant stated that it was only a few days prior to vacating the rental unit that he found out that the landlord had to give the tenant 1 month's rent compensation when providing notice for landlord's use of property. The landlord responded that the unpaid July rent would have equalled the 1 month's rent compensation.

The tenant stated that the landlord to date had not returned his \$350.00 security deposit and that he had never agreed to the landlord keeping any part of the security deposit. The tenant also stated that to date he had not provided his forwarding address in writing to the landlord. The landlord acknowledged that the security deposit had not been returned to the tenant as there was damage the rental unit. The landlord commented that 'all this' started when she refused to give the tenant a reference.

The tenant in this application is seeking 1 month's rent compensation for the notice served by the landlord and return of double the security deposit.

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to 1 month's rent compensation per section 51 of the Act.

I am not satisfied that the rent was in fact paid to the landlord or that the tenant has proven the rent was paid by simply stating that his mother gave him the cash and that it was left on the steps for the landlord. If the July rent was not paid to the landlord, that unpaid rent would equal the 1 month's rent compensation owed the tenant by the landlord per section 51(1) of the Act:

#### *Tenant's compensation: section 49 notice*

*(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

Section 26(2) of the Act clearly states: *(2) A landlord must provide a tenant with a receipt for rent paid in cash* and going forward it is imperative that the landlord comply with the Act and provide her tenants with receipts for all cash payments.

This portion of the tenant's application is dismissed without leave to reapply.

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to return of double the security deposit.

The tenant to date has not provided the landlord with his forwarding address in writing therefore the timelines stated in the legislation for return of the security deposit have not been in effect. Both parties were advised during this hearing that as the tenant's forwarding address is noted on the application, today's date will act as notice to the landlord for receipt of the tenant's forwarding address. The landlord effective today's date now has 15 days in which to comply with section 38 of the *Act* regarding return of the security deposit.

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
- (a) the date the tenancy ends, and*
  - (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:*
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

This portion of the tenant's application is dismissed with leave to reapply.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The tenant's application is hereby dismissed.

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: November 7, 2011.

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Residential Tenancy Branch