



# Dispute Resolution Services

Page: 1

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 and the pet damage deposit retained by the landlord.

The tenant and the landlord participated in the hearing by telephone. Both parties gave testimony.

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

Is the tenant entitled to double the return of the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began on October 27, 2012 and a security deposit of \$250.00 was paid. The parties testified that the tenancy ended on March 27, 2012. According to the landlord, the tenant's written forwarding address was received around the end of May 2012 and the landlord had provided the tenant with a cheque for partial return of the security deposit after deducting costs for carpet cleaning and damages. The tenant testified that she did not cash the cheque because she expected the full amount of \$250.00 to be returned within the required 15 days.

The land lord testified that the tenant failed to clean the carpets as required and the tenant's notice to vacate was not in compliance with the Act.

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

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy or the landlord has obtained an order through dispute resolution to keep the deposit to satisfy a liability or obligation of the tenant.

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, whichever is later.

Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application seeking an order to keep the deposit within the 15-day deadline 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.

With respect to the landlord's own claim for damages and cleaning, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter officially before me. 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 paid double the \$250.00 security deposit in the amount of \$500.00 plus the \$50.00 cost of this application.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$550.00 and 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.

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: August 27, 2012.

---

Residential Tenancy Branch