



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes MNSD

### Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

### Background and Evidence

This tenancy began in 2004, and the Tenant paid the Landlord a security deposit of \$287.50 on March 2, 2004. In evidence, the Tenant provided a copy of the receipt signed on behalf of the corporate Landlord.

The Tenant testified she vacated the premises on June 27, 2012. The Tenant testified that in mid to late May of 2012, she gave the Landlord a letter with her notice to end tenancy effective at the end of June 2012. The Tenant testified that she included her forwarding address in the letter.

In evidence the Tenant provided a copy of the letter dated May 22, 2012, which includes her notice to end the tenancy and provides the Landlord with her forwarding address. I note this is the same address which appeared on the Tenant's Application for Dispute

Resolution, and the Landlord received a copy of this letter in the Tenant's evidence package.

The Tenant testified she did not sign over a portion of the security deposit to the Landlord. The Tenant further testified that no written incoming or outgoing condition inspection reports were performed by the Landlord. The Tenant testified that an Agent for the Landlord appeared at the rental unit at the end of the tenancy and looked at the unit from the doorway.

In reply, the Agent for the Landlord testified that he never received the forwarding address of the Tenant. He alleges he talked on the phone with the Tenant but she hung up on the Agent. The Agent testified that the Tenant was a good renter and they had no problems with her or the condition of the unit at the end of the tenancy. Apparently the rental unit was re-rented in July of 2012.

In reply the Tenant denied a phone conversation had occurred and testified she called the Agent for the Landlord and left him a phone message with her phone number, and he did not return the call.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed in writing that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus the interest.

I prefer the evidence of the Tenant over that of the Landlord in regard to the Landlord's receipt of the Tenant's forwarding address. I find the Tenant had kept written records. I find the Tenant provided sufficient documentary evidence to support the fact she sent the corporate Landlord her forwarding address on or about May 22, 2012, along with her notice to end the tenancy. I also find the Landlord had the Tenant's forwarding address in her Application and in her evidence package.

Furthermore, the Agent for the Landlord gave contradictory testimony regarding this issue. In the first instance he adamantly claimed the Landlord "never" had a forwarding

address for the Tenant. Later in the hearing when the Agent replied to the fact the Landlord had her forwarding address in the evidence and in her Application, he testified that he had phoned the Branch and asked what to do about the deposit now he had the forwarding address of the Tenant. This leads me to find the Landlord had ample opportunity to return the deposit to the Tenant, or claim against the deposit once they had the evidence and Application prior to the hearing, but failed to do so.

I also note that by failing to perform incoming or outgoing condition inspection reports the Landlord had extinguished the right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act.

Here I find that the Landlord did not have authority under the Act to keep any portion of the security deposit.

### Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$585.11**, comprised of double the security deposit paid (2 x \$287.50), plus the interest on the original amount of \$10.11.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. This Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 18, 2012.

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Residential Tenancy Branch