



# 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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

Both parties submitted the following documents into evidence:

- A copy of a document entitled "Intent to Lease" for a two year fixed term tenancy beginning on August 15, 2011 for a monthly rent of \$1,500.00 per month and a "\$1,000.00 damage deposit upon acceptance of lease by lessor. (less the \$500.00 paid with the Intent to Lease agreement).";
- A copy of a letter dated July 14, 2011 from the tenant to the landlord advising the landlord that the tenant no longer intends to move in to the rental unit and providing the landlord with the tenant's forwarding address to return the cheques and deposit.

The tenant submits that she had intended to move into the rental unit primarily because her previous landlord had told her he was selling his place and she needed to find a new place to live. The tenant also submits that her old landlord changed his mind and she did not at that time have to move. When she found this out she provided the landlord with the letter noted above. The parties agreed the tenant paid the landlord a deposit in the amount of \$1,000.00.

The landlord submits the intent to lease is the tenancy agreement. The landlord testified that he had not returned the deposit because, despite being able to rent the unit for September 2011, he had suffered a loss because of the tenant's decision to not rent

the unit beginning on August 15, 2012 as per their agreement. The landlord submits that the deposit he was holding was not a security deposit but a deposit to hold the rental unit and when the tenant moved in it would be converted to a security deposit.

### Analysis

Section 1 of the *Act* defines a security deposit as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting a residential property.

Section 20 stipulates a landlord must not do any of the following:

1. Require a security deposit at any time other than when the landlord and tenant enter into a tenancy agreement;
2. Require or accept more than one security deposit in respect of a tenancy agreement;
3. Require a pet damage deposit at any time other than when the parties enter into a tenancy agreement or the tenant acquires a pet during the tenancy;
4. Require or accept more than one pet damage deposit in respect of a tenancy agreement; or
5. Require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy.

Based on the testimony and evidence provided by both parties, I find the parties had entered into a tenancy agreement and the tenant paid a security deposit of \$1,000.00.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the landlord received the tenant's forwarding address on or about July 14, 2011 and as such, had until July 28, 2011 to submit an Application for Dispute Resolution seeking to claim against the deposit or return the deposit in full to the tenant. I accept the landlord failed to do either and as such has failed to comply with his obligations under Section 38(1) and the tenant is therefore entitled to compensation as outlined under Section 38(6).

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,050.00** comprised of \$2,000.00 double the security deposit and the \$50.00 fee paid by the landlord for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 02, 2012.

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Residential Tenancy Branch