



# Dispute Resolution Services

Page: 1

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, the interest and the filing fee for the claim.

Both parties appeared, gave 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 at the hearing.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenant paid a security deposit of \$650.00 in September 2010. The tenant vacated the premises on July 31, 2012. On August 2, 2012, the tenant provided the landlord with a written notice of the forwarding address to return the security deposit to. On August 8, 2012, the landlord returned \$440.00 of the security deposit to the tenant.

The tenant stated there was a discussion with the landlord's agent regarding drape cleaning, however, and at the end of that discussion he was frustrated and did not sign over any portion of the security deposit as he wanted to think about it further. The tenant stated he decided not to go back and sign the paperwork. Filed in evidence is a CD of the conversation.

The landlord's agent stated the CD submitted by the tenant proves the tenant agreed to the deduction of \$150.00 for drape cleaning. The landlord's agent stated they did not have permission to retain \$60.00 for the fob and key.

At the request of both parties, I listened to the CD, while at the beginning of the conversation the tenant was agreeable to the drapage deduction, however, by the end of the CD, the tenant was no longer willing to sign any portion of the security deposit to the landlord, without further consideration.

On the CD the landlord's agent stated at the end of the conversation "come to sign papers, can't issue you a cheque based on the check list".

The evidence was the tenant did not come back and sign any papers giving the landlord written permission to retain any amount from the security deposit.

### 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 as required by the Act.

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.

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. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of \$1,350.00, comprised of double security deposit (\$650.00) on the original amount held, and the \$50.00 fee for filing this

application. The tenant has received \$440.00 of the security deposit and that amount will be deducted for the amount payable. The tenant will be granted a formal order for the balance due of **\$910.00**.

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. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial 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: November 14, 2012.

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Residential Tenancy Branch