



# Dispute Resolution Services

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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 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 a refund of the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began on August 15, 2011 and a security deposit of \$337.50 was paid. The parties testified that the tenancy ended on August 15, 2012. According to the landlord, the tenant's written forwarding address was received before the tenant vacated on August 15, 2012.

The land lord acknowledged that the security deposit was not returned and that the tenant had never given the landlord written permission to keep any portion of the security deposit. The landlord testified that the tenant failed to leave the unit clean and that the tenant had incurred utility costs that were not paid and this was the reason that the tenant's security deposit was retained by the landlord.

### **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 if the landlord has obtained an order through dispute resolution entitling the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

Section 38 of the Act requires that the security deposit and pet damage deposit be refunded to the tenant within 15 days of the end of the tenancy and the date that the written forwarding address has been received, whichever is later. However, if the landlord decides to make a claim against the tenant to keep the deposit for a debt or damages, then 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.

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 testimony that the tenant owes the landlord monetary compensation, I was not able to hear, nor consider any of the landlord's claims 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, the landlord is at liberty to make a separate application to claim damages pursuant to section 67 of the Act, , if the landlord decides to do so.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the \$337.50 security deposit in the amount of \$675.00 plus the \$50.00 cost of this application.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$725.00 and I 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.

**Conclusion**

The tenant is successful in the application and is granted a monetary order for an amount equivalent to double the security deposit under section 38(6) of the Act.

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: December 06, 2012.

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Residential Tenancy Branch