



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord (applicant and respondent) were represented at today's hearing. The parties provided prior document submissions to the hearing and their testimony. The parties were also permitted to discuss their dispute with a view to settling their dispute. The landlord acknowledged receiving the tenant's evidence. The landlord acknowledged they did not send the tenant any evidence. Therefore the landlord's document evidence received by the Branch is not admissible; however, the landlord was given opportunity to make relevant oral submissions respecting their evidence.

### **Preliminary matters**

The respondent questioned the jurisdiction of the Residential Tenancy Act (the Act) respecting the tenancy. The respondent testified they occupy a not for profit housing co-operative unit and they are a member of the co-operative, and they pay their "housing charges" (rent) to the not for profit co-operative. The respondent testified they are not the owner of the housing unit. The applicant acknowledged knowing these facts. The parties agree the applicant rented a (spare) bedroom from the respondent and they shared the bathroom and kitchen facilities with the respondent.

**Section 4** of the act, in part, states as follows;

### **What this Act does not apply to**

#### **4 This Act does not apply to**

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

I accept the respondent's testimony in finding they are not an owner of the accommodation. I further find Section 4(a) of the Act refers to the accommodations respecting the tenancy relationship between the not for profit co-operative and the member of the co-operative (the respondent). I find the Act operates respecting the tenancy relationship between the applicant and the respondent. As a result of all the above, I find the Act applies to this tenancy arrangement, and the hearing proceeded on the merits of the application.

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

Is the tenant entitled to double the security deposit amount claimed?

### **Background and Evidence**

The undisputed facts before me, as testified by both parties, are as follows.

The tenancy began on July 01, 2012 and ended on October 31, 2012 as a verbal tenancy agreement. Rent was \$450.00 per month. The landlord collected a security deposit of \$225.00 at the outset of the tenancy. There was no move in inspection or move out inspection conducted in accordance with the Act with the requisite inspection reports. Regardless, the landlord testified that prior to the end of the tenancy they were in possession of the tenant's forwarding address in writing. After the tenancy ended the landlord sent the tenant a portion of the security deposit in the amount of \$41.94, retaining the balance.

### **Analysis**

On preponderance of the relevant evidence I have reached a decision.

I find there is no evidence the tenant's right to the return of the security deposit has been extinguished.

**Section 38(1)** of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's forwarding address in writing on October 31, 2013. I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of the tenancy ending and is therefore liable under section 38(6) which provides:

- 38(6) If a landlord does not comply with subsection (1), the landlord
- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord collected a security deposit of \$225.00 and was obligated under section 38 to return this amount. The amount which is doubled is the \$225.50 original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$450.00 and is further entitled to recovery of the \$50 filing fee for a total entitlement of \$500.00. From this amount I deduct the returned amount of \$41.94, leaving the tenant eligible for a monetary award of **\$458.06**.

### **Conclusion**

**I grant** the tenant an Order under section 67 for the amount of **\$458.06**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

**This Decision is final and binding on both parties.**

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: February 25, 2013

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Residential Tenancy Branch

