



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and pet deposit?

### Background and Evidence

The tenancy commenced August 2011 and the tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00. The tenant and the landlord's son participated in a move-out inspection together but a condition inspection report was not prepared.

The tenant did not authorize the landlord to retain any portion of the security deposit or pet deposit. The tenant wrote a letter to the landlord on August 22, 2012 seeking return of the security deposit and pet deposit and the tenant a forwarding address in that letter which was that of her parent's home. The letter was sent via registered mail on August 23, 2013 and was successfully delivered on August 24, 2012.

The landlord acknowledged receiving the registered letter from the tenant and read it into evidence during the hearing. The landlord acknowledged that she did not have the tenant's consent to retain any portion of the deposits, did not return any portion of the deposits to the tenant, and did not file an Application for Dispute Resolution claiming against the deposits.

The landlord submitted the tenant is not entitled to return of her deposits because:

1. The tenant provided a forwarding address that was not the address at which she resided.
2. The tenant did not give sufficient notice to end the tenancy and left the unit damaged.

### Analysis

As the parties were informed during the hearing, the landlord's submissions regarding damage and insufficient notice to end the tenancy were not issues for me to decide as the landlord had not filed an Application for Dispute Resolution. Rather, the issues for me to determine are whether either party extinguished their right to the deposits; and, whether the landlord complied with the requirements of the Act with respect to handling of the deposits. The landlord remains at liberty to make a separate application for damages within two years of the tenancy ending.

Based upon the undisputed evidence and the requirements of sections 24 and 36 of the Act, I find the landlord extinguished her right to make deductions from the deposits for damage by failing to complete condition inspection reports that comply with the requirements of the Residential Tenancy Regulations.

Deductions for unpaid rent or other amounts unrelated to damage may be made from a deposit where the landlord has the written consent of the tenant or the authorization of an Arbitrator. In this case, the landlord did not have the written consent of the tenant or an Arbitrator to make any deductions from the deposits.

Section 38(1) of the Act requires the landlord to either return the security deposit and pet damage deposit to the tenant or make an Application for Dispute Resolution claiming against the deposits within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

There is no requirement in the Act that a tenant's forwarding address be the same as the tenant's address of residence. In fact, section 89(1) of the Act recognizes that a tenant's forwarding address and address of residence may be different.

Upon hearing the landlord acknowledge receipt and read the tenant's letter of August 22, 2012 into evidence, I am satisfied the tenant provided the landlord with a forwarding address at which she could receive a refund cheque or documents, such as a Landlord's Application for Dispute Resolution, had the landlord pursued such a remedy.

Since the landlord did not obtain the tenant's written consent to make any deductions from the deposits, did not file an Application for Dispute Resolution, and did not refund the deposits to the tenant within 15 days of receiving the forwarding address I find the landlord violated section 38(1) of the Act and the tenant is entitled to return of double the deposits.

In light of the above, The tenant request for \$2,400.00 is granted plus recovery of the \$50.00 filing fee paid for this application. The tenant is provided a Monetary Order in the total amount of \$2,450.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The tenant has been provided a Monetary Order in the amount of \$2,450.00 to serve upon the landlord and enforce as necessary.

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 27, 2013

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Residential Tenancy Branch

