



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, 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, as well as for loss under the Tenancy Agreement or the Act. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

The style of cause has been altered to reflect the correct order of the applicant's name.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant testified that the registered mail was not accepted. It must be noted that failure to accept registered mail is not a ground for Review. I also accept the tenant's testimony that the landlord was sent the document evidence submitted in this matter by a separate registered mail, for which the tenant provided a registered mail tracking number.

The tenant was given full opportunity to be heard, to present evidence and to make submissions under sworn affirmation.

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

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed facts before me are as follows.

The tenancy began on September 01, 2011 and ended on April 30, 2012 as a written tenancy agreement. Rent was \$2000.00 per month. At the outset of the tenancy the landlord collected a security deposit of \$1000.00. There was no move in inspection or move out inspection conducted by the landlord in accordance with the Act and

Regulations. The tenant testified that they e-mailed the landlord their forwarding address in mid-November 2013, for which the tenant provided a copy dated November 14, 2012. In addition the tenant testified they sent the landlord their forwarding address in writing, by registered mail, on December 10, 2012, for which the tenant provided a receipt and tracking number into evidence. The tenant testified the landlord has not returned any of the security deposit.

In addition, the tenant claims that in November 2011 the landlord authorized the tenant to purchase a new central vacuum cleaner hose unit for such a system within the rental unit, for which the landlord said they would reimburse the tenant, but they did not. The tenant provided the receipt for the vacuum hose in the amount of \$335.94. The tenant testified that repeated requests for reimbursement from the landlord were ignored.

### **Analysis**

On preponderance of the undisputed 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 is deemed to have received the tenant's forwarding address by registered mail December 15, 2012. I find that the landlord failed to repay the deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address 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 \$1000.00 and was obligated under section 38 to return this amount within 15 days of receiving the tenant's forwarding address. The amount which is doubled is the \$1000.00 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$2000.00**.

I also accept the tenant's evidence that they supplied the rental unit with a central vacuum cleaner hose for which the landlord is responsible. As a result, I find the tenant is entitled to compensation for the hose in the claimed amount of **\$335.94**.

As the tenant was successful in their claim the tenant is further entitled to recovery of the \$50 filing fee for a total entitlement of **\$2385.94**.

### **Conclusion**

**I grant** the tenant an Order under section 67 for the amount of **\$2385.94**. 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: March 27, 2013

---

Residential Tenancy Branch