



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for a return of double his security deposit from the landlord. The parties agreed that this tenancy ended on January 31, 2013, by way of a mutual agreement to end this tenancy entered into at a December 19, 2012 hearing of an application for dispute resolution from the landlord and her husband. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on February 20, 2013. I am satisfied that the tenant served his hearing package and that both parties served their written evidence packages to one another in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2012. Monthly rent was set at \$1,600.00, payable in advance on the first of each month, plus 60% of the utilities for this rental property. The landlord continues to hold the tenant's \$800.00 security deposit paid on August 31, 2012.

The landlord testified that she participated in a joint move-in condition inspection at the commencement of this tenancy. The notes from this inspection were included as an Addendum to the written Residential Tenancy Agreement entered into between the parties. A copy of the Addendum and the Agreement were entered into written evidence by the tenant. The landlord and her husband confirmed that no joint move-out condition inspection was conducted at the end of this tenancy and no report of any move-out inspection was sent to the tenant at the end of this tenancy.

The landlord entered sworn oral testimony and written evidence that she received the tenant's forwarding address sent by email on February 15, 2013. She did not apply for dispute resolution to retain any portion of the tenant's security deposit nor did she retain any portion of it. She confirmed her written evidence that she chose to retain the tenant's security deposit because the tenant had caused damage during this tenancy.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the security deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address. The landlord testified that she did not apply for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord confirmed that she did not obtain the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double his security deposit with interest calculated on the original amount only. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover his original security deposit plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$800.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	800.00
<b>Total Monetary Order</b>	<b>\$1,600.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 15, 2013

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Residential Tenancy Branch

