



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The tenant applies for the return of a portion of the tenant's security deposit, doubled.

### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, doubled?

### Background and Evidence

This tenancy began in August, 2010. The tenant testified he moved out July 4, 2012. He made an agreement with the landlord that in lieu of the rent for these days in July, the landlord could keep a portion of the deposit, and return \$640.00 to the tenant. The landlord did not return the balance of the deposit as promised. The tenant sent an email to the landlord on March 13, 2013, which including his forwarding address, and requested payment, but the landlord has not paid the deposit back.

The landlord testified the tenant vacated July 7, 2012, but that the tenancy was to go until July 31, 2012. The landlord verbally agreed to return a portion of the deposit, but when he personally inspected the premises, he found there was painting required and other damage. He therefore did not return the rest of the deposit.

The landlord previously filed a claim against the tenant (file 799871). That claim was withdrawn, with liberty to reapply. The landlord has never reapplied for his claim, however.

### Analysis

In most situations, 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 to retain the 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 pay the tenant double the amount of the security deposit (section 38(6)). There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds extinguish the tenant's right to claim the deposit.

I note that the tenant seeks only \$640.00 (doubled), as he wishes to honour the agreement made with the landlord. In the absence of a formal claim by the landlord, with proper notice to the tenant of the landlord's claim, I have no jurisdiction in this hearing to consider the landlord's claim as against the tenant, for loss of rent for the balance of July, or for damage or painting costs.

I find the tenant entitled to double the deposit, as claimed, of \$1,280.00. The tenant is also awarded recovery of the filing fee of \$50.00.

Conclusion

A monetary order in the amount of \$1,330.00, payable by the landlord to the tenant is issued.

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: June 13, 2013

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Residential Tenancy Branch