



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Is the tenant entitled to the return of the security deposit under section 38 of the Act?

### **Background and Evidence**

The landlord confirmed that the tenant had paid a security deposit of \$300.00 at the start of the tenancy and that after the tenant vacated on April 30, 2013, the landlord had received a written forwarding address.

The landlord testified that, although the tenant had left damage to the unit, the landlord never made an application seeking monetary compensation or to keep the deposit, because the landlord was not aware that this was necessary under the Act. The landlord stated that they merely kept the deposit but did offer the tenant a partial refund.

The tenant testified that she had paid \$325.00 deposit and is requesting double the deposit wrongfully retained by the landlord, because the landlord had not returned the deposit to the tenant within 15 days as required under the Act.

## **Analysis**

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the tenant's written forwarding address has been received, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or an order has been obtained by the landlord after the end of the tenancy to retain the amount for rent or damages.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the landlord's testimony that the tenant's security deposit was \$300.00 and that under the Act the tenant is entitled to \$600.00 plus the \$50.00 fee paid by the tenant for this application.

With respect to the landlord's testimony about monetary claims for damages to the suite, I am not able to hear, nor determine, the respondent landlord's claims as this hearing was convened on the *tenant's* application and only the tenant's claim is before me. The landlord is at liberty to make their own application if they intend to seek damages.

I hereby issue a monetary order to the tenant in the amount of \$650.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if unpaid.

**Conclusion**

The tenant is successful in the application and is awarded a Monetary Order for double the security deposit and the cost of the application.

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: July 17, 2013

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Residential Tenancy Branch

