



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD MNDC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with his forwarding address on May 21, 2013 and with the Application for Dispute Resolution both by registered mail. The landlord agreed they had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

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

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant objected to the male agent representing the landlord for he pointed out that she speaks good English as she teaches medical concepts and is a nurse. On July 22, 2013, the tenant by letter had appointed the male as her agent and the tenant had in an earlier application attempted to name him as the landlord but did not know his full name. The tenant said he had paid a security deposit of \$187.50 on December 9, 2009, rent was \$410 a month and the landlord served a Notice to End Tenancy on February 28, 2013 to be effective May 1, 2013 for landlord's use of the property. After some dispute, the landlord did give him a free month's rent for March 2013. The tenant said he gave notice and vacated the unit on April 3, 2013 and provided his forwarding address in writing on May 21, 2013. The landlord said the tenant did not actually move out until April 11, 2013 so some rent plus damages are

owed to the landlord. The tenant's deposit has never been returned but he gave permission to retain \$41 (\$13.66 day x 3 days) of it as he said he occupied the unit until April 3, 2013.

The landlord said in documents she retained the deposit for the tenant had caused damage to the unit and owed rent for extra days of occupancy. She had not filed an Application to claim against the deposit and I advised her representative in the hearing that it had to be done within the two year time limit specified in the Act.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

On the issue of the agent representing the landlord, I find he had written authority from the landlord and it is irrelevant whether or not the landlord had sufficient English ability to represent herself. I find he had good knowledge of the facts and the tenant, in fact, had tried to name him as the co-landlord in a prior application. Therefore, I dismiss this objection of the tenant.

The Residential Tenancy Act provides:

**Return of security deposit and pet damage deposit**

*38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*  
*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*  
*the landlord must do one of the following:*

*(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;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) 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, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

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)).

I find the evidence of the tenant credible that he paid \$187.50 security deposit on December 9, 2009, served the landlord with his forwarding address in writing by registered mail on May 21, 2013 and vacated on April 3, 2013. I find he gave permission for the landlord to retain \$41 of the deposit and has not received the refund of the balance of his security deposit. I find the landlord agreed with these facts but said the move out date was April 11, 2013. Although the tenant asked for more costs, I find that section 72 authorizes the award of the filing fee only for costs.

Whether or not the tenant moved out on April 3 or 11, 2013, I find the landlord had no legal right to retain the remainder of the deposit as she has not filed an Application to claim against the deposit. I find the tenant entitled to recover double the balance of his security deposit (\$146.50 x2). In answer to the landlord's query, the order is payable immediately and can be enforced through the Small Claims Court by the tenant following the correct procedure.

### **Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this application.

Original Security deposit (no interest 2009-2013)	187.50
Authorized deduction	-41.00
Balance of security deposit in trust	146.50
Double balance of security deposit	293.00
Filing fee for this application	50.00
Total monetary order to tenant	343.00

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: August 20, 2013

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Residential Tenancy Branch