



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

This Tenancy began on August 31, 2012 on a fixed term tenancy until August 31, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,100.00 and a security deposit of \$1,050.00 was paid.

The Tenant stated in his direct testimony that the forwarding address in writing was given to the Landlord on May 15, 2013. The Landlord disputes this stating that it was not received until approximately May 27, 2013 when he received the Tenant's Application for dispute resolution with the notice of a hearing package. The Tenant has also provided an unsigned letter dated March 26, 2013 which provides a forwarding address and the demand for the Landlord to return the security deposit.

Both parties agreed that the tenancy ended on April 30, 2013 and that a cheque for \$950.00 was given to the Tenant by the Landlord's agent as shown by the copy of the

processed cheque (dated May 6, 2013) from the Landlord. The Landlord states that the processed cheque shows that it was processed on May 16, 2013. The Tenant states that the Landlord withheld \$100.00 of the security deposit without permission. The Landlord states that the cheque was returned minus the \$100.00 because of left over furniture (a chair) at the rental property. This is supported by the Landlord's witness, J.W. who confirmed in his direct testimony that he gave the cheque to the Tenant, R.N. The witness stated that the Tenant, R.N. was not happy about the deduction, but did not request the remaining \$100.00 at the time nor did she make any future claims for the return of the \$100.00. The Tenant emphasized that no permission was granted to retain the \$100.00. The Landlord states that by not refusing the cheque the Tenant was accepting the deduction.

### Analysis

Section 38 (1), (4) and (6) of the Residential Tenancy Act states,

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.

It is clear based upon the evidence of both parties that of the \$1,050.00 security deposit, \$950.00 was returned by the Landlord to the Tenant. The Tenant did not agree in writing to the Landlord retaining the \$100.00. I find that the Tenant has established a claim for the return of the \$100.00 held by the Landlord and is subject to Section 38 (6) and must pay the Tenant an additional \$1,050.00 for failing to comply with the Act. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$1,200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### Conclusion

The Tenant is granted a monetary order for \$1,200.00.

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 23, 2013

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Residential Tenancy Branch

