



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenant paid a security deposit of \$430.00 on January 15, 2012. The tenant vacated the premises on February 28, 2013. The tenant provided the landlord with a written notice of their forwarding address on March 2, 2013. The tenant did not sign over a portion of the security deposit.

The tenant testified that the landlord had agreed to return the security deposit. Filed in evidence is an email from the landlord dated April 29, 2013.

The landlord testified he has not returned the security deposit due to damages caused by the tenant. The landlord stated he filed an application for dispute resolution, however, on April 16, 2013, that application was dismissed as the arbitrator was not satisfied the tenant has been sufficiently served.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

In this case, the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest. However, that application was dismissed with leave to reapply. However, that was not an extension of any statutory deadline.

On April 29, 2013, the landlord had agreed to return the security deposit, however, the landlord failed to do. The evidence of the landlord was that he retained the security because he felt the tenant had caused damage.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$910.00**, comprised of security deposit (\$430.00) on the original amounts held, and the \$50.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with

this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order 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: September 20, 2013

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Residential Tenancy Branch

