



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of double the security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy with the Tenant and a co-tenant started on November 1, 2013. Rent of \$1,700.00 was payable monthly and at the outset of the tenancy the Landlord collected \$850.00 as a security deposit and \$425.00 as a pet deposit. The Parties mutually conducted a move-in inspection and completed a report. On June 4, 2013, the Tenant gave the Landlord notice to end the tenancy for June 8, 2013 and the Tenant moved out on that date. The Landlord offered the Tenant an opportunity to inspect the unit for damage by the pet and the Tenant sent an agent who attended but declined to enter the unit. The Landlord found no pet damages and returned the pet deposit to the Tenant. The Tenant provided her forwarding address in

writing on June 11, 2013 and requested return of the remaining security deposit. The original deposits were paid by the Tenant by cheque.

The Landlord states that as the co-tenant remained in the unit the tenancy was continued with the co-tenant alone however the original tenancy agreement that included the Tenant was not changed to remove the Tenant's name. The Landlord states that since the co-tenant wished to stay in the unit, and as they did not wish to return the original security deposit to one or the other tenant, they retained the original security deposit for the continuing tenancy with the co-tenant.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. A security deposit is paid in respect of a particular tenancy and any co-tenant may end a tenancy by giving notice to end the tenancy. Where a co-tenant ends a tenancy, it ends for all co-tenants. If a co-tenant remains in the unit and continues to pay rent, a new tenancy may be created with that co-tenant alone. Policy Guideline #13 provides that regardless of who paid a deposit in a co-tenancy, any tenant who is a party to the tenancy agreement to which a deposit applies may apply for return of the security deposit.

Given the undisputed evidence that the Tenant gave notice to end the tenancy and the evidence that the Landlord continued to rent the unit to the remaining co-tenant, I find that the original tenancy with both the Tenant and the co-tenant ended and a new tenancy was created with the remaining co-tenant. When the tenancy ended and the Tenant provided its forwarding address in writing requesting the return of the security deposit, the Landlord was obliged to return the security deposit or make an application to retain the security deposit. Given the Tenant's evidence of provision of forwarding

address and request for the return of the security deposit, no evidence that the co-tenant provided a forwarding address in writing and requested the security deposit, and considering that no application was made by the Landlord to retain the security deposit, I find that the Landlord had no authority to retain the security deposit or to use it for a second tenancy with the co-tenant. As the Landlord did not return the security deposit to the Tenant who requested the deposit in writing, I find that the Landlord is now required to repay double the security deposit plus zero interest in the amount of \$1,700.00. As the Tenant has been successful with its application, I find that the Tenant is also entitled to recovery of the \$50.00 filing fee for a total entitlement of \$1,750.00.

#### Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$1,750.00**. If necessary, this order may be filed in the Small Claims 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: October 22, 2013

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Residential Tenancy Branch

