



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Corrected Decision**

**Dispute Codes:** MNSD, MNDC, 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 evidence and testimony provided.

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

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

### **Background and Evidence**

The tenancy began on April 21, 2008, at which time a security deposit of \$700.00 was paid.

The landlord testified that the current rent was \$1,550.00 per month after being increased in 2013 from the previous rate of \$1,400.00.

The tenant testified that, until January 2012, the rent had been \$1,400.00. The tenant testified that the landlord had not served a written Notice of Rent Increase on the required form, but notified her in November 2012 that, as of January 1, 2013, the rent would be increased to \$1,550.00. The tenant paid the higher amount of rent for five months until the tenancy ended on May 30, 2013.

The tenant is requesting reimbursement of the additional rent increase she paid on the basis that the manner and amount of the rent increase notice was in violation of the Act. The amount of the claim is \$750.00, representing \$150.00 per month noncompliant rent increase for five months.

The landlord's position is that, because the tenant had never protested the amount of the rent increase tenant therefore freely consented to the new rental rate and is not entitled to reimbursement.

The tenant testified that, at the end of the tenancy, the landlord was provided with their written forwarding address on June 1, 2013, but did not refund her \$700.00 security deposit.

In regard to the security deposit, the tenant stated that they had never given the landlord written permission to keep the deposit. The tenant pointed out that the landlord did not make any application for dispute resolution to obtain a monetary order under the Act to authorize the landlord to keep any portion of the security deposit. The tenant testified that the landlord merely declined to return the funds. The tenant is requesting a refund of double the security deposit.

The landlord acknowledged that the deposit was paid by the tenant and that it was not returned to the tenant after the end of the tenancy. The landlord stated that, although he had received a written forwarding address from the tenant, the deposit was not returned because the rental unit was not left in a clean, undamaged condition when the tenant left and the landlord incurred cleaning and repair costs. The landlord testified that the security deposit funds were kept to pay for damages without first obtaining an order to do so.

## **Analysis**

### **Security Deposit**

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy. A landlord may also retain the security deposit if the landlord has successfully obtained a monetary order through dispute resolution permitting the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

The Act states that, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give written permission to the landlord allowing the landlord to keep the deposit. I also find that the landlord did not make an application to obtain an order to keep the deposit within the 15-day deadline to do so.

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, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for damages and loss caused by the tenant, I find that I am unable to consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter before me.

The landlord is at liberty to make their own application if the landlord intends to pursue a claim against the tenant. Information is available at Residential Tenancy Branch for both landlords and tenants.

In the matter before me, however, I find that under section 38, the tenant is entitled to total compensation of \$1,406.45 comprised of \$1,400.00, which is double the \$700.00 security deposit, plus interest of \$6.45.

#### Claim for Overpaid Rent

With respect to the tenant's claim for over-paid rent, I find that the evidence confirmed that additional rent of \$150.00 per month, was collected by the landlord for 5 months.

Section 43(1) of the Act states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing. In this instance, I find no evidence that the parties agreed to the amount of rent in writing.

Even if it was proven that the parties had both agreed in writing to a rent increase that exceeded the percentage allowed under the Act and Regulation, I find that section 41 of the Act states that the landlord is *still* required to follow the process provided by the Act in implementing a rent increase by giving the required amount of notice and using the approved, "*Notice of Rent Increase*" form.

Section 42(2) and 42(3) of the Act states that a landlord must give a tenant a Notice of Rent Increase at least 3 months before the effective date of the increase and the Notice of the Rent Increase must be in the approved form.

In this instance, I find that there was no evidence the written consent was ever given by the tenant. Furthermore, I find that the landlord did not follow the proper

process as described in section 42 by failing to serve the tenant with the formal Notice of Rent Increase at least three months in advance of the effective date, and neglecting to issue the Notice on the approved form.

Section 43(5) states, "*If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase*".

In light of the above and based on the Act, I find that the tenant is therefore entitled to be compensated in the amount of \$750.00 for additional rent of \$150.00 wrongfully collected over 5 months between January 2013 and May 2013.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$2,206.45 comprised of \$1,406.45 for the security deposit refund, \$750.00 reimbursement of excessive rent and the \$50.00 cost of the application.

I hereby issue a monetary order in favour of the tenant for \$2,206.45. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The tenant is successful in the application and is granted a monetary order for a refund equivalent to double the security deposit, plus interest and a refund for over paid rent.

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 07, 2013

**Corrected: November 22, 2013**

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Residential Tenancy Branch

