



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on August 15, 2013. The landlord stated on August 16, 2013, the package was successfully delivered. Filed in evidence is the Canada post track history report, which indicated the document was received by the tenant on August 16, 2013. I find that the tenant has been duly served in accordance with the Act.

The landlord testified that the tenant was served with their evidence package in person on November 8, 2013. I find that the tenant has been duly served in accordance with the Act.

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 landlord entitled to retain the security deposit?

### Background and Evidence

Rent in the amount of \$515.00 was payable on the first of each month. A security deposit of \$247.50 was paid by the tenant. The tenant vacated the rental unit on August 1, 2013.

The landlord testified on August 2, 2013, the parties attended a dispute resolution hearing and they were granted a monetary order against the tenant in the amount of \$814.19.

The landlord testified at the original hearing that they made a request to retain the tenant's security deposit to offset the monetary order that they were granted; however, that request was not granted as they had not applied to retain the security deposit in their application.

The landlord testified that they seek to be allowed to retain the security deposit to offset the monetary order they received on August 2, 2013.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 38(3) of the Residential Tenancy Act the landlord may retain from the security deposit an amount that the director has previously ordered the tenant to pay if that amount remains unpaid at the end of the tenancy.

In this case, the landlord received a monetary order against the tenant in the amount of \$814.19. That monetary has not been paid by the tenant. As a result, I find the landlord is entitled under section 38(3) of the Act, to retain the security deposit in the amount of \$274.50 to offset the monetary order issued on August 2, 2013.

As the landlord has been successful with their application, I find the landlord is entitled to recover from the tenant an amount of **\$50.00** for the filing fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is authorized to retain the tenant's security deposit to offset the monetary order issued on August 2, 2013.

The landlord is granted a further monetary order against the tenant to recover the cost of filing their application.

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: November 15, 2013

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Residential Tenancy Branch

