



# 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 by the tenant for a monetary order for return of double the security deposit, and to recover the filing fee from the landlord.

Both parties appeared, gave 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.

### Preliminary Issue

The landlord stated that the tenant caused damage to the rental unit which exceeds their security deposit. The landlord was informed that there was no Landlord's Application for Dispute Resolution scheduled to be heard at today's hearing.

The landlord confirmed that they had not filed an Application for Dispute Resolution, to seek monetary compensation for damages to the unit or to keep all or part of the security deposit.

As a result, the only issues scheduled to proceed at today's hearing is the tenant's application for the return of the security deposit and to recover the cost of the filing fee.

The landlord is a liberty to file a Landlord's Application for Dispute Resolution, within the statutory timeframe under the Act.

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?  
Is the tenant entitled to recover the cost of the filing fee from the landlord?

### Background and Evidence

The tenant testified that they paid a security deposit in the amount of \$700.00, at the start of the tenancy.

The tenant testified that they provided the landlord with a written notice of their forwarding address to return the security deposit to, on July 8, 2013, and did not sign over a portion of the security deposit.

The landlord testified that the tenant moved from another rental premises that they owned and their security deposit of \$475.00, was applied to this tenancy. The landlord stated the tenant never paid a security deposit of \$700.00.

The landlord acknowledged that they received the tenant's forwarding address on July 8, 2013.

The tenant argued that while she agreed \$475.00 was paid from the prior rental premises. The tenant stated that they had an agreement that they would receive a credit for work that was done to the rental unit.

This was denied by the landlord.

### Analysis

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

The evidence of the tenant was that she paid a security of \$700.00. The evidence of the landlord was that the tenant paid a security deposit of \$475.00, which was transferred from the previous rental premise. The evidence of the tenant was that they agreed the security deposit of \$475.00 was transferred from the previous rental, however, they were to get credit for work they performed. This was denied by the landlord.

I find in the absent of any further evidence from the tenant, such a written agreement, that they have failed to prove a security deposit of \$700.00 was paid. As a result, I find the security deposit paid by the tenant was \$475.00.

In this case, there was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that 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.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

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..

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 **\$1,000.00**, comprised of double the security deposit (\$475.00) on the original amount 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: November 04, 2013

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Residential Tenancy Branch

