



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD

### **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 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 affirmed testimony and relevant evidence that was properly served.

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

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

### **Background and Evidence**

The tenancy began on September 3, 2012 and current rent is set at \$650.00 per month. A security deposit of \$325.00 was paid. The tenancy ended on August 31, 2013. The parties testified that the tenant sent the landlord written notification of the forwarding address on August 15, 2013.

The landlord acknowledged the following:

- They did not return the tenant's security deposit,
- No written permission was given by the tenant to retain the deposit,
- The landlord did not obtain an Order authorizing them to keep the deposit.

The land lord testified that the tenant left damage to the unit and the landlord submitted evidentiary material including photos and documents to support this testimony.

**Analysis : Claim for Return of 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 , or if the landlord has obtained an order through dispute resolution to keep the deposit to satisfy a liability or obligation of the tenant.

To make a claim against the security deposit, the landlord would need to submit an application for dispute resolution to seek a monetary order. The application to make the claim must be filed within 15 days after the later of:

- the end of the tenancy, and
- the date that the tenant's forwarding address was received.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently 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, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal only with the *tenant's* application under section 38 of the Act. The landlord did not make an application nor cross application with respect to the landlord's monetary claim and the only matter before me was the tenant's request for a refund of the security deposit.

That being said, I must point out that the landlord is still at liberty to make a separate application to claim damages if the landlord feels that compensation is warranted pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the \$325.00 security deposit that was wrongfully retained by the landlord, in the amount of \$650.00.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$650.00 in favour of the tenant. This order must be served

on the landlord and, if unpaid, 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 against the landlord for a refund of double the tenant's security deposit now being held.

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: December 09, 2013

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Residential Tenancy Branch

