



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss issues arising out for this tenancy with one another. The female landlord confirmed that the landlords received copies of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 10, 2013. I am satisfied that the tenant served this package to the landlords in accordance with the *Act*.

Although the tenant did not provide her written evidence to the landlords, she said that all of the documents she entered into written evidence were documents issued by the landlords. Based on the sworn testimony of the parties, there has been no need for me to consider this written evidence, all of which was written by the landlords.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for her application from the landlords?

### Background and Evidence

This tenancy commenced on December 9, 2010. Monthly rent was set at \$675.00, payable on the first of the month. The landlords continue to hold the tenant's \$337.50

security deposit paid on or about December 15, 2010, when the tenant moved into the rental unit.

Although the female landlord testified that a joint move-in and joint move-out condition inspection were undertaken, she said that the landlords did not prepare a report of either of those inspections.

The tenant applied for a monetary award of \$675.00, plus the recovery of her \$50.00 filing fee, as she maintained that the landlords had failed to comply with the provisions of the *Act* by retaining her security deposit. The female landlord confirmed that on January 22, 2013, the landlords received the tenant's notice to end her tenancy by March 1, 2013. This tenancy ended on March 1, 2013.

The female landlord testified that the landlords received the tenant's forwarding address on or about February 26, 2013, a few days before this tenancy ended. She testified that the landlords have not returned any portion of the tenant's security deposit, nor have they applied for dispute resolution to obtain authorization to keep it. Although she maintained that the tenant gave her oral agreement to let the landlords keep her security deposit to compensate for damage arising out of the tenancy, she said that she had no written agreement from the tenant in which the landlords were allowed to keep any portion of her security deposit.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

Subsection 36(2)(c) of the *Act* reads in part as follows:

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit...for damage to residential property is extinguished if the landlord...*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

*3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

There is undisputed evidence that the landlord did not return the tenant's security deposit in full within 15 days of the end of this tenancy, did not apply for dispute resolution within that time frame, and did not obtain the tenant's written authorization to retain any portion of her security deposit. In accordance with section 36(2) and 38 of the *Act* and in accordance with Policy Guideline 17, I find that the tenant is therefore entitled to a monetary order amounting to double her security deposit with interest calculated on the original amount only. No interest is payable over this period. Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

**Conclusion**

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of double her security deposit plus the recovery of her filing fee

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the Act ( $\$337.50 \times 2 = \$675.00$ )	\$675.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$725.00</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 13, 2013

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Residential Tenancy Branch

