



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF, MNR

### Introduction

This hearing dealt cross applications. The landlord filed an application seeking to retain the security deposit. The tenant has filed an application seeking the return of double the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background, Evidence

The tenancy began on July 1, 2006 and ended on August 31, 2013. The tenants were obligated to pay \$800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$400.00 security deposit. .

The tenant gave the following testimony:

The tenant stated that condition inspection reports was not conducted by the landlord in writing at move in or move out. The tenant stated that she conducted the inspection on her own in writing both times. The tenant stated that she made numerous requests to have the landlord present but he was busy and not able to attend. The tenant stated that she provided her forwarding address in writing on September 3, 2013.

The landlord gave the following testimony:

The landlord stated that they did a walk thru with the tenant at the end of tenancy. The landlord stated that he did receive the tenant's forwarding address in writing but due to the condition of the unit the landlord felt they were entitled to withhold the deposit.

## Analysis

It was explained to the landlord in great detail their obligation to conduct condition inspection reports in accordance with the Act at the beginning and end of tenancy. The landlord stated that they were aware of their responsibility but due to scheduling conflicts he was unable to conduct them.

The landlord was seeking to retain the deposit to cover cleaning and repairs that they allege the tenant is responsible for. The landlord was unable to provide sufficient evidence to depict the unit at the start of the tenancy versus the end of tenancy. Based on the insufficient evidence before me I dismiss the landlords' application in its entirety.

The Tenant said she is applying for the return of double the security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

The landlord did not return the deposit or file for dispute resolution within the applicable guidelines. The tenant is entitled to the return of double the security deposit.

The tenant is entitled to the \$400.00 deposit plus accrued interest of \$13.14 plus the doubling provision of \$400.00 = \$813.14.

The tenant is also entitled to the recovery of the \$50.00 filing fee.

### Conclusion

The landlords' application is dismissed in its entirety.

The tenant has established a claim for \$863.14. I grant the tenant an order under section 67 for the balance due of \$863.14. This order may be filed in the Small Claims 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: January 28, 2014

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Residential Tenancy Branch

