



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF, MNDC, FF, O

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- other remedies, identified by him in his application as a return of his security deposit.

The landlord did not attend this hearing, although I waited until 11:14 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on October 3, 2013. He provided the Canada Post Tracking Number from his Customer Receipt to confirm this mailing. In accordance with sections 89(1) and 90 of the *Act*, I am satisfied that the landlord was deemed served with the tenant's dispute resolution hearing package on October 8, 2013, the fifth business day after its registered mailing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise

decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of the landlord's participation in this hearing, I order the landlord's application dismissed without liberty to reapply.**

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award equivalent to double the amount of his 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 his application from the landlord?

Background and Evidence

This one-year fixed term tenancy commenced on August 15, 2013. When the initial term ended, the tenancy continued as a periodic tenancy until the tenancy ended on September 15, 2013, at which time the tenant vacated the rental unit. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The tenant testified that he paid a \$1,200.00 security deposit on August 15, 2012.

The tenant testified that he sent his forwarding address to the landlord on October 1 or 2, 2013. Although he has spoken with the landlord since giving her his forwarding address, the tenant gave undisputed testimony that the landlord has not returned any portion of his security deposit.

The tenant applied for a monetary award of \$2,400.00. His reason for seeking this monetary award was twofold. He maintained that on August 17, 2013, the landlord gave him an oral notice to end his tenancy by September 15, 2013 for landlord use of the property. He testified that he received no written notice to end this tenancy from the landlord, nor did the landlord use the proper Residential Tenancy Branch (RTB) form for issuing a notice to end his tenancy. The tenant also requested a return of his security deposit, which he maintained has been illegally withheld by the landlord.

Analysis

I first note that the *Act* does not allow a landlord to obtain a security deposit in excess of 50% of the monthly rent. In this case, the tenant gave undisputed sworn testimony that the landlord charged a full month's rent for his security deposit. I also note that section 52 of the *Act* requires a landlord to issue a written notice to end tenancy on the

approved RTB form. Without such a written notice, a landlord cannot legally end a tenancy.

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 in full 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 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 or pet damage 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."

In this case, the tenant gave undisputed sworn testimony that he provided his forwarding address to the tenant on October 1, or 2, 2013. He was certain that he provided his forwarding address to the landlord before he sent the landlord a copy of his dispute resolution hearing package. Based on the tenant's undisputed testimony and in accordance with section 90 of the *Act*, the tenant's forwarding address was deemed to have been received by the landlord by October 7, 2013, the fifth business day after its mailing. At that point, the landlord had 15 days to either return the tenant's security deposit in full or apply for dispute resolution to obtain authorization to retain that deposit.

Although the landlord applied for authorization to retain the tenant's security deposit, she did not do so until October 24, 2013, after the 15-day time limit for doing so had expired. I find that the landlord has neither returned the security deposit within 15 days of being deemed to have received the tenant's forwarding address, nor did she apply for dispute resolution within that period. The tenant testified that he did not sign any document allowing the landlord to retain any portion of his security deposit. The tenant also confirmed that he had not waived his right to obtain double his security deposit. Based on the evidence before me, I therefore find that the tenant is entitled to a monetary order of the \$2,400.00 identified in the tenant's application. This amount is double the value of the tenant's security deposit with interest calculated on the original amount only. No interest is payable over this period.

I cannot consider the issuance of a monetary award in excess of the amount claimed by the tenant. However, as the tenant also applied to recover his filing fee, I allow the tenant an additional monetary award of \$50.00 to recover that cost.

### Conclusion

I dismiss the landlord's application without leave to reapply.

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double the value of his security deposit plus his filing fee for his application:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$1,200.00 x 2 = \$2,400.00)	\$2,400.00
Recovery of Tenant's Filing Fee for his Application	50.00
<b>Total Monetary Order</b>	<b>\$2,450.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: January 08, 2014

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Residential Tenancy Branch

