



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord, for the return of rent money and for the return of the filing fee for the Application.

Only the Tenant appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on October 25, 2013, and deemed received under the Act five days later. The Tenant's evidence was that the registered mail was not claimed by the Landlord. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlord has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlord?

Is the Tenant entitled to the return of the rent money?

### Background and Evidence

The Tenant testified that he met the Landlord to view the rental unit on October 3, 2013. The Tenant informed the Landlord that he only wanted to rent the room for one month.

According to the testimony of the Tenant, the Landlord told him he could stay as long as he wanted. The Tenant paid the Landlord one month of rent in the amount of \$350.00, and \$200.00 as a security deposit.

The following day, October 4, 2013, the Tenant returned to the rental unit in order to sign a written tenancy agreement with the Landlord. The Tenant testified that when he returned the Landlord told him he must stay in the rental unit for at least two months and the Landlord demanded another month of rent. The Tenant refused to pay the additional rent and informed the Landlord he no longer wanted to rent the rental unit if he was required to go into a term of longer than one month, as initially agreed upon.

The Tenant wrote to the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlord on October 8, 2013. In evidence the Tenant provided a copy of the registered mail receipt.

The Tenant also requested the return of the one month of rent he paid. The Tenant did not sign over a portion of the security deposit. The Tenant testified he did not move into the rental unit.

### Analysis

Based on the above, the undisputed testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

I find that an oral tenancy agreement was established between the Tenant and the Landlord for a month to month tenancy; however, the Landlord breached this agreement by not supplying the rental unit on a month to month basis and by requiring the Tenant to enter into a fixed term tenancy agreement and to pay additional rent in advance. I find that the Landlord is not entitled to retain the rent paid in advance in this circumstance and I order the Landlord to pay the Tenant the sum of **\$350.00**, in return of the one month of rent.

I find 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, as required under section 38.

Therefore, I find 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, or the written agreement of the Tenant. 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. Under section 38 of the Act, I must order the Landlord to pay the Tenant double the security deposit, in the amount of **\$400.00**.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$800.00**, comprised of double the security deposit (2 x \$200.00), \$350.00 in rent and the \$50.00 fee for filing this Application.

### Conclusion

The Tenant is granted 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 final and binding on the parties, except as otherwise provided under the Act, and 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: February 04, 2014

---

Residential Tenancy Branch

