



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

This hearing was convened in response to an application **by the tenant** for a Monetary Order for the return of the security deposit under Section 38.

Both, parties were represented at today's hearing and were afforded an opportunity to resolve or settle their dispute, and were also given opportunity to present all relevant evidence and testimony in respect to the tenant's claim and to make relevant prior submissions of evidence to the hearing and fully participate in the conference call hearing. Both parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence to this application that they wished to present.

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

Is the tenant entitled to the return of the security deposit?

### **Background and Evidence**

The undisputed facts before me are as follows. The tenancy began September 01, 2012 and ended by contractual and mutual agreement August 31, 2013. The landlord collected a security deposit of \$925.00 at the outset of the tenancy, which the landlord retains in trust. Neither party presented evidence in respect to mutually conducted inspections of the rental unit in accordance with the Act or Regulations. The landlord testified that they received, by registered mail, the tenant's forwarding address in writing

- dated September 21, 2013 – shortly after the tenant mailed it September 28, 2013. As a result, the parties agree that they then discussed the security deposit in relation to certain deficiencies respecting the rental unit but did not arrive at agreement respecting its administration, and the landlord retained the security deposit to date.

### **Analysis**

**Section 38(1)** of the Act provides as follows      **(emphasis is for ease)**

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

38(1)(a)      the date the tenancy ends, and

38(1)(b)      the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d)      **file an application for dispute resolution** to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a)      may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b)      **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$925.00 and was obligated under Section 38 to administer this amount in accordance with Section 38(1) of the Act. The

landlord did not and as a result, Section 38(60) of the Act prescribes that the amount which is *doubled* is the \$925.00 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$1850.00**.

### **Conclusion**

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1850.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

**This Decision is final and binding on both parties.**

*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: March 11, 2014

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Residential Tenancy Branch

