



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, O

### Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of both parties, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

Both parties confirmed that the tenancy ended on November 14, 2013 and that there was a \$1,800.00 security deposit paid to the Landlord. Both parties also confirmed that the Tenant provided their forwarding address in writing to the Landlord during the condition inspection report for the move-out on November 14, 2013.

The Landlord states that a cheque was mailed to the Tenant on November 28, 2013 for \$1,800.00. The Tenant confirms receiving the cheque by regular mail on December 3, 2014. The Landlord states that he complied with the Act by mailing the security deposit to the Tenant within the allowed 15 day period. The Tenant disputes this stating that he did not receive the payment until December 3, 2014 which is beyond the 15 day period.

Both parties confirmed that the Tenant received and cashed the original \$1,800.00 security deposit and this dispute is for compensation for the Landlord failing to comply with Section 38 of the Act.

## Analysis

Section 38 of the Residential Tenancy Act speaks to the return of the security deposit and states,

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to*

*meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*

(6) 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find that the Tenant has established a monetary claim for compensation for the return of the security deposit. Both parties have confirmed that the original \$1,800.00 security deposit was repaid and that the Landlord did not file an application for dispute resolution to dispute the return within the allowed timeframe. I find that the Landlord failed to repay the original amount within the allowed 15 day period which ended on November 29, 2013. The Tenant received the Landlord's cheque on December 3, 2013. The Tenant is granted a monetary order for \$1,800.00 which is an amount equal to the original security deposit.

### Conclusion

The Tenant is granted a monetary order for \$1,800.00.

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 26, 2014

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Residential Tenancy Branch

