



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant and the landlord.

### Issue(s) to be Decided

Whether the tenant is entitled to a monetary order for all or part of the security deposit; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord was in attendance and admitted receiving the dispute resolution package. Based on the above, I find that the landlord has been sufficiently served with the notice of hearing documents pursuant to the *Residential Tenancy Act (Act)*. The tenant testified the tenancy began on April 1, 2010 whereupon initially the landlord resided with the tenant as roommates. The landlord moved out and a new tenancy agreement was commenced on December 1, 2012 whereupon he became the landlord on a month to month tenancy with a monthly rent of \$ 500.00 due on the 1<sup>st</sup> of each month and that a security deposit of \$ 375.00 paid on April 1, 2010 was transferred to this tenancy. The tenancy ended on October 31, 2013.

The tenant provided a copy of a letter sent by email to the landlord dated September 30, 2013 providing the landlord with the tenant's forwarding address. The tenant testified that she had not received any portion of her security deposit to date and had not permitted the landlord in writing to retain any portion of it.

The landlord testified that he received the September 30th, letter with the tenant's forwarding address but did not return the security deposit because he incurred cleaning and repair costs. He admitted not having written consent to retain any of the deposit.

### Analysis

Section 38(4) states that the landlord may retain an amount from a security or a 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. As I have no evidence before me that the landlord had any written agreement from the tenant at the end of the tenancy regarding the retention, I find the landlord had no authority to retain any amount from the security deposit.

Section 38(1) of the *Act* stipulates that the landlord must, within 15 days of the end of the tenancy or receipt of the tenant's forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution to claim against the security deposit for any damage or loss the landlord may have incurred.

I accept the tenancy ended on or before October 31, 2013 and that the tenant provided her address in writing to the landlord on September 30, 2013. To be compliant with Section 38(1) the landlord would have to return the security deposit to the tenant, or file his own application no later than November 15, 2013.

I find that as the landlord failed to comply with section 38 (1) therefore I award the tenant double the amount of the security deposit held pursuant to section 38(6) amounting to \$ 750.00 and her filing fee of \$ 50.00.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$ 800.00** comprised of double the security deposit; and the \$50.00 fee paid by the tenant for this application. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 18, 2014

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Residential Tenancy Branch

