



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38; and
2. A Monetary Order for compensation – Section 67.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness for the Landlord was not called to present evidence. The Witness for the Tenant provided evidence under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

### Background and Relevant Evidence

The following are undisputed facts: The Tenant moved into the unit on April 1, 2013 and paid rent of \$550.00 monthly. The Landlord collected \$275.00 as a security deposit on March 17, 2013. The Landlord is not the owner and lives in the unit. The Tenant moved out of the unit on or before June 1, 2013. There is no written agreement.

The Tenant states that he provided his forwarding address in writing and provided a copy of the letter dated December 6, 2013 and the registered mail tracking number. The Landlord states that he received the Tenant’s forwarding address when he received the application package a few weeks ago.

The Landlord states that the Tenant was a roommate and that although the Landlord collected rent from the Tenant, this was passed on to the owners. The Landlord states that there is no written tenancy agreement for his long term tenancy with the owner. The Landlord denies that he is a landlord under the Act. The Landlord states that the Tenant orally agreed for the Landlord to keep the security deposit for damages to the unit.

### Analysis

Section 1 of the Act defines a landlord to include a person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the undisputed facts that the Landlord collected the security deposit, collected the rent and permitted the occupation of the unit by the Tenant under an oral agreement, I find that the Landlord is a landlord within the meaning of the Act and therefore carries the obligations of a landlord under the Act.

Section 38 of the Act provides that a landlord may only retain a security deposit with the written agreement of the tenant. As there is no written agreement, I find that the Landlord does not have the right to retain the security deposit.

Section 38 further provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the provision of the registered mail tracking numbers, I find on a balance of

probabilities that the Landlord received the Tenant's forwarding address in December 2013. As the Landlord did not make an application to claim against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenant double the security deposit in the amount of **\$550.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$550.00**. If necessary, this order may be filed in the Small Claims Court and 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 13, 2014

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Residential Tenancy Branch

