



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) for a monetary order for the return of the security deposit and compensation under Section 38, as well as for loss for lack of a service agreed upon but not provided: cable service. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing. The landlord was assisted by their representative.

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The ***agreed*** facts before me are as follows. The tenancy began on February 01, 2013 as a verbal tenancy agreement and ended on November 30, 2013. Rent was \$500.00 per month, and the parties agree that the tenant paid monthly rent in cash but that no receipts were issued by the landlord, because, according to the landlord, "the rental suite is an *illegal* suite". There was no move in inspection conducted at the outset. There was a move out inspection conducted at the end of the tenancy, although it was not recorded by the landlord as required by Section 36(2) of the Act.

The ***disputed*** facts before me are as follows. The tenant claims the landlord collected a security deposit of \$225.00 in cash at the outset of the tenancy and still retains it in full. The tenant testified that when they provided the cash deposit, there were no witnesses, nor were they given a receipt by the landlord. The landlord denies the tenant paid a security deposit and, "that the tenant has no receipt to prove they paid a security

deposit". The tenant claims that the rent was inclusive of cable service for the unit, with which the landlord disagrees. The landlord claims that the rent included access to the laundry facilities, instead. The tenant claims they were denied cable service for the last 2 months of the tenancy for which they claim \$100.00. The tenant further claims that after the move out inspection they orally provided the landlord with their forwarding address, which the landlord's brother appeared to write down.

The tenant claims that they and the landlord's brother- whom did not attend this hearing – conducted a walk-through of the rental unit and that after the mutual inspection the brother and landlord met outside to discuss matters and did not return. The tenant testified they did not come to an agreement respecting the security deposit at the end of the tenancy. The landlord insisted that they did not collect a security deposit from the tenant and therefore have no deposit to return to the tenant.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have reached a Decision.

In respect to the clear discrepancy between the parties as to whether the tenant paid a security deposit, I find the landlord's testimony is consistent that they rented out an "illegal suite" and therefore did not provide a written tenancy agreement as required, or receipts as required, when associated with the rental unit. However, the landlord also does not dispute the tenant gave them cash for the rent when payable. Therefore, on balance of probabilities, I prefer the tenant's version, and in so doing I accept that they paid a security deposit in cash for which they were not provided a receipt as this is not the practice of the landlord.

In respect to the matter of the cable service, I find that the tenant has not provided evidence that the payable was inclusive of cable service. As a result, I find I am unable to confirm the terms of the verbal agreement in dispute, and therefore only the standard terms for a tenancy agreement apply – which do not include cable service. As a result I **dismiss** the tenant's portion of their claim for loss of cable service.

**Section 38** of the Act provides, in part, as follows (**emphasis 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.

And

- 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.

In this matter I find the tenant's testimony regarding provision of the forwarding address does not meet the prescribed method as stated by Section 38(1)(b) as the tenant did not provide their forwarding address *in writing*. Therefore, the tenant **is not** entitled to *double* the original amount of the claimed security deposit. In addition:

**Section 36** of the Act, in part states as follows (**emphasis for ease**)

**Consequences for tenant and landlord if report requirements not met**

**36** (2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit** or a pet damage deposit, or both, for damage to residential property **is extinguished if the landlord**

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord did not complete a condition inspection report in concert with the regulations and is therefore is precluded from making a claim to retain the deposit. However, in this matter, it must be reiterated that the landlord denies holding a security deposit. Regardless, as a result of all the above, having determined that the tenant

paid a security deposit and the landlord's right to keep it or make a claim against it are extinguished; and, in light of the landlord's refusal a deposit exists, I find it appropriate that I Order the landlord to return the original deposit to the tenant in the amount of **\$225.00**. The tenant is further entitled to recovery of the \$50.00 filing fee for this application for a total entitlement of **\$275.00**.

### **Conclusion**

I grant the tenant a Monetary Order under section 67 for the sum of **\$275.00**. 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: April 09, 2014

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Residential Tenancy Branch

