



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, MNDC

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Is the tenant entitled to a refund of the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began in January 2009 and the most current rent was set at \$725.00 per month. A security deposit of \$300.00 was paid. The tenancy ended in December 2013 and the tenant's written forwarding address was given to the landlord in January 2014.

The tenant's evidence indicated that the landlord had given the tenants a refund cheque for their security deposit, but had placed a stop payment on the cheque. The tenant is now claiming a refund of double the security deposit because the landlord failed to return their deposit within the 15-day deadline under the Act.

The land lord acknowledged that the security deposit was not returned and that the tenant had never given the landlord written permission to keep any portion of the security deposit.

The landlord testified that they did not make an application for an order to keep the tenant's security deposit, but now realize that they still have a right to proceed with a claim for damages through their own application.

### **Analysis**

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if:

- the tenant gives written permission at the end of the tenancy, or if
- the landlord has obtained an order through dispute resolution authorizing the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

Section 38 of the Act requires that the security deposit and pet damage deposit be refunded to the tenant within 15 days of the end of the tenancy and the date that the written forwarding address has been received, whichever is later.

However, if the landlord decides to make a claim against the tenant to keep the deposit for a debt or damages, then the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application seeking an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the matter before me, I find that under section 38, the tenant is entitled to be paid double the \$300.00 security deposit in the amount of \$600.00.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$600.00 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

**Conclusion**

The tenant is successful in the application and is granted a monetary order for an amount equivalent to double the security deposit under section 38(6) of the Act.

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: May 22, 2014

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Residential Tenancy Branch

