



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNSD, FF

### **Introduction**

The tenant applies for a monetary order from the landlord, for the return of the tenant's security deposit, (less the value of some damage admitted to by the tenant), plus the recovery of the tenant's filing fee.

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

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recovery of her filing fee?

### **Background and Evidence**

The landlord is a tenant of these premises, and sublet a portion of the premises to the tenant. A fixed term tenancy as between them began September 1, 2012 and was to end August 31, 2013. In fact the tenancy ended one month earlier, on July 31, 2013. The tenant paid a security deposit of \$525.00 in late August, 2012. The landlord continues to hold this deposit. The monthly rent was initially \$1,050, but after a month was reduced to \$950.00. There is dispute as to whether the tenant met the conditions of the deduction from rent, and whether she owed the full rent, or the reduced rent.

The parties confirm that although there was a walk through at the start of the tenancy, there was no written condition inspection report prepared by the landlord at the start of the tenancy. The landlord acknowledges she was provided with the tenants' forwarding address in writing, on September 9, 2013. She did not return the tenant's deposit, as she claims she suffered losses and damages caused by the tenant or her pets. The landlord does not agree that the deductions proposed by the tenant accurately reflect the value of damages in question.

Although aware that tenants in some cases are entitled to a return of double the deposit, the tenant submitted at the hearing that she does not seek any doubling of the security deposit.

The written materials of the parties reference numerous items of damage or loss alleged by the landlord. No claim has been filed by the landlord for such claims, and she testified it is her intention to decide whether to file a claim or not, once she learns of the outcome of the tenant's claim.

### Analysis

As the landlord has filed no claim, I have no authority in this hearing to resolve any claim she may have such as for unpaid rent, loss of rent, or damage or cleaning to the premises. As the landlord does not agree to the tenant's valuations in her claim of a few of these damages, or that these damages are the only damages that have occurred, it is appropriate that all items of damage or loss be dealt with together in the context of a future claim by the landlord. Given that the landlord has not yet made any claim, and as the parties declined to reach any settlement regarding any such claim, I have no basis upon which to assess or consider these proposed deductions by the tenant.

Section 38 of the Residential Tenancy Act governs the dispute at hand regarding the security deposit. Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. As noted above, the landlord has filed no claim as against the tenant. The 15 day period ended September 24, 2013, but the deposit was never returned. Furthermore, the landlord failed to complete a required Condition Inspection Report at the start of the tenancy, thereby extinguishing the landlord's right to retain the tenant's security deposit (as per section 38(5)).

Under these circumstances, as the landlord has made no claim as against the tenant, as the landlord failed to comply with the provisions of section 38(1), and as her right to any of the deposit is extinguished, the landlord must return the tenant's security deposit in its entirety to the tenant. I acknowledge and accept that the tenant waives a claim to a doubling of security deposit, and make no order for such doubling.

As the tenant is successful in her claim to recover her deposit, it is also appropriate that she recover the \$50.00 filing fee from the landlord.

### Conclusion

The tenant is entitled to recover the \$525.00 security deposit, and the \$50.00 filing fee from the landlord. The landlord must pay a total of \$575.00 to the tenant.

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: June 03, 2014

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Residential Tenancy Branch