



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to a Tenant's Application for Dispute Resolution (the "Application") for the return of part of the Tenant's security deposit and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance for the Landlord during the 26 minute duration of the hearing. However, the Landlord had provided written evidence in advance of the hearing, although a copy of this had not been served to the Tenant and the Tenant had no knowledge of the contents of the Landlord's written evidence.

As a result, I turned my mind to the Tenant's service of the Application, the Notice of Hearing documents and the Tenant's written evidence to the Landlord. The Tenant testified that she had served the Landlord with these documents on March 20, 2014 by registered mail. The Tenant provided the Canada Post tracking number during the hearing which I documented in the file. The Canada Post website indicates that it was received and signed for by the Landlord on March 28, 2014. The Landlord's written evidence also indicates that he was in receipt of the above documents from the Tenant.

Based on this evidence, I find that the Tenant served the Landlord with the required documents for this hearing in accordance with the *Residential Tenancy Act* (the "Act").

As a result, the hearing continued in the absence of the Landlord and the Tenant's undisputed affirmed testimony and written evidence was carefully considered in this decision.

### Issue(s) to be Decided

Is the Tenant entitled to the balance of her security deposit?

### Background and Evidence

The Tenant testified that this tenancy started on September 1, 2010 for a fixed term of one year. The tenancy was renewed on a yearly fixed term basis and the Tenant left the tenancy on February 28, 2014. At the end of the tenancy, the Tenant was paying rent in the amount of \$1,575.00 which was due on the first day of each month.

The Tenant paid the Landlord a security deposit in the amount of \$750.00 at the start of the tenancy and a \$250.00 pet damage deposit in February, 2012 when they got a pet.

The Landlord and Tenant completed a move in condition inspection report at the start of the tenancy and a move out condition inspection report on February 28, 2014.

The Tenant provided the Landlord with a forwarding address on the move out condition inspection report and consented on the report to the Landlord deducting \$300.00 from the \$1,000.00 he held in her deposits for breaking the tenancy early and for damaged to a radiator cover.

The Tenant was expecting the return of \$700.00 of her deposits but a week later she received a cheque from the Landlord in the mail dated March 3, 2014 in the amount of \$300.00. The Tenant testified that the Landlord had failed to return \$400.00 to which she did not consent to and now seeks to recover this amount including the filing fee for a total of \$450.00.

The Landlord's written evidence dated June 27, 2014 indicates that he has decided to return the \$450.00 back to the Tenant. However, the Tenant denied any knowledge of the Landlord's intent to return this money and confirmed that no cheque for this amount had been received by her at the time of this hearing.

The Tenant also testified that the \$300.00 cheque sent to her by the Landlord had not been cashed because the Tenant was not sure whether cashing the cheque would have undermined her Application.

### Analysis

Based on the undisputed testimony and documentary evidence provided for this hearing, I make the following findings based on the balance of probabilities.

Section 38(1) of the Act explains 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 deposit or make an Application to claim against it.

I accept the Tenant's testimony and the copy of the condition inspection report which documents the Tenant's forwarding address, that the Landlord was provided with the Tenant's forwarding address in writing on March 28, 2014.

Section 38(4) (a) of the Act allows a Landlord to retain a portion of the Tenant's deposits if the Tenant agrees in writing in order to satisfy a liability or obligation of the Tenant.

In this case, I find that the Tenant gave the Landlord written consent to retain \$300.00 from her deposits for damage to the unit and breaking the tenancy early.

Therefore, the Landlord was required to return the remaining balance (\$700.00) of the Tenant's deposits to the Tenant or make an Application to retain a further portion of it by March 15, 2014, neither of which the Landlord did.

Section 38(6) of the Act states that if a Landlord does not comply with Section 38(1) of the Act, the Landlord must pay the Tenant double the amount of the deposits.

As the Landlord failed to deal with the remainder of the Tenant's deposits in accordance with the Act, the Tenant is entitled to the return of double the deposits in the amount of \$2,000.00 less any deductions allowed under the Act. In this case, the Tenants had allowed a deduction of \$300.00 and the Landlord is therefore liable for an amount of \$1,700.00.

Policy Guideline 17 to the Act explains that unless a Tenant specifically waives their right to the doubling of the deposits in the Application or during the hearing, the arbitrator will order the return of double the deposit if the Landlord has failed to Act in accordance with Section 38(1) of the Act.

However, the Tenant explained that she did not want double the amount of the deposits and just wanted the remainder of her deposits (\$400.00) as originally agreed with the Landlord.

As the Tenant has been successful in her monetary claim, I award the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act.

As the Tenant has not cashed the Landlord's cheque for \$300.00 and it cannot be determined whether the cheque is still valid, I issue the Tenant with a Monetary Order for \$750.00 (\$700.00 relating to the remainder of the Tenant's deposits plus the filing fee of \$50.00).

### Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order, pursuant to Section 67 of the Act, in the amount of **\$750.00**.

The Landlord should make arrangements for the Tenant to receive these funds in full. However, if payment is not made, then the Tenant may serve the Landlord with a copy of the Monetary Order (attached to the Tenant's copy of this decision) and the Monetary Order can then be enforced through the Small Claims Court 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: July 07, 2014

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Residential Tenancy Branch

