



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GLASS MANOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNSD FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38, as well as to recover a key fob deposit. 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 parties acknowledge receiving one another's evidence.

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed facts before me are as follows. The tenancy began on June 01, 2013 and ended on January 31, 2014 when the tenant vacated. Rent in the amount of \$1215.00 was payable during the tenancy. The landlord collected a security deposit of \$607.50 at the outset of the tenancy. There was a mutual *move in* inspection conducted at the outset. The parties disagree on what efforts were made by each of them to initiate a mutual move out inspection and together complete the condition inspection report. The parties agreed that the tenant provided the landlord with only

several days of notice they would not be returning to the unit. The result of which was that there was no mutual *move out* inspection conducted at the end of the tenancy and no agreement as to how the deposit was to be administered. None the less, the landlord completed a move out inspection and a condition inspection report on their own on January 31, 2014. The landlord calculated the cost of deficiencies found, inclusive of certain costs to which they determined they were entitled, as well as factoring the key fob deposit of \$60.00: with the overall result that the landlord prepared a cheque for the tenant in the balance amount of \$247.60, on February 14, 2014. The landlord testified that several days later on February 17, 2014 they received the tenant's forwarding address in writing and consequently sent the tenant the cheque.

### **Analysis**

On preponderance of the evidence, I have reached a Decision.

**Section 38(1)** of the Act provides 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.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

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.**

As there was no agreement between the parties as to how the security deposit would be administered, the landlord was obligated under Section 38 to file for dispute resolution to make a claim against the security deposit, or return the entire security deposit, within 15 days of receiving the tenant's forwarding address. As the landlord did neither, I find the tenant has established an entitlement claim for double the security deposit. The amount which is doubled is the original amount of the security deposit of \$607.50, in the sum of \$1215.00. The tenant is also entitled to the return of \$60.00 for the key fob deposit. From these amounts I deduct the portion of all deposits returned by the landlord. The tenant is further entitled to recovery of the \$50.00 filing.

*Calculation for Monetary Order:*

Section 38(6)(b) double security deposit	\$1215.00
Key fob deposit	60.00
Filing Fees for the cost of this application	50.00
<i>Less all deposits returned</i>	<i>-247.60</i>
<b>Monetary award to tenant</b>	<b>\$1077.40</b>

It must be noted that it was discussed, and the parties were apprised, that it is available to the landlord to file their own application for Dispute Resolution.

### **Conclusion**

**I grant** the tenant an Order under Section 67 of the Act for the sum of **\$1077.40**. 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: June 17, 2014

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Residential Tenancy Branch

