



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD RR MNDC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) An Order for a refund of overpaid rent and compensation for an emergency repair; and
- c) To recover the filing fee for this application.

### **SERVICE**

The landlord did not attend. The tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address by putting it in the mailbox on May 9, 2014. The postal records show that the landlord refused the Application and did not pick up the evidence package after several notices were left. The tenant said the envelope containing the Application had been ripped open, and then returned to him. I find the documents are deemed to be legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

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

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act, to a refund of rent paid for May 2014 and to compensation for a bathroom repair?

### **Background and Evidence**

The landlord did not attend the hearing although deemed to be served with the Application/Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$980 in April 2012 and signed a one year lease; in May 2013, he signed a lease for a further year terminating on April 30, 2014. Rent was \$1000 a month. Both parties initialled the box on the lease stating there would be vacant possession delivered on April 30, 2014. Furthermore, on March 28, 2014, the tenant gave a Notice to End the

tenancy on April 30, 2014 and he said the landlord and he agreed. The tenant testified that as the time drew close and the landlord was showing the suite, the landlord suggested they stay an extra month and they delivered a \$1000 cheque for rent for May 2014. Then the landlord advised them that he would like them to vacate on April 30, 2014 as provided in their lease. They vacated on April 30, 2014 and provided their forwarding address in writing on May 9, 2014 by putting it in the landlord's mail slot. A condition inspection report was done at move-out but no copy was provided to them.

The tenant filed an Application on May 28, 2014 and he said the landlord then returned \$470.84 of his security deposit. The balance of the tenant's deposit has never been returned and he gave no permission to retain any of it. He claims twice his security deposit pursuant to section 38 of the Act.

The tenant also claims a refund of rent for May, 2014. The rent cheque for May was never returned and the landlord cashing the May rent cheque caused the tenant's bank account to go into overdraft as they were paying rent for two places. He claims bank overdraft fees of \$41.01. Furthermore, he said the landlord required him to buy parts for a sink and bathtub which were the landlord's responsibility to repair. He claims \$36.60 for a pop up rod for the sink and a tub drain kit (problems with the stopper so a full kit was needed). The tenant has included evidence of his bank account withdrawals and the invoice for the bathroom parts to support his oral evidence. In evidence also are copies of emails, the tenant's notice to end tenancy on April 30, 2014, his forwarding address and a tenancy agreement.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

*38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*  
*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*  
*the landlord must do one of the following:*

*(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;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that he paid \$980 security deposit on in April 2012, served the landlord personally with his forwarding address in writing on May 9, 2014 and vacated on April 30, 2014 as provided in his lease. However, I find in his emails he gave permission for the landlord to retain \$20 for paint and \$50 for a tub stopper from the deposit (leaving a balance of \$910) and he received \$470.84 of his deposit back on May 29, 2014. I find the forwarding address put into the landlord's mailbox is deemed to be received May 14, 2014 and the refund was sent within the 15 days allowed by section 38. I find the tenant entitled to recover double the balance of his security deposit which was illegally retained (\$439.16x2) or \$878.32. I find no evidence that the landlord filed an Application to claim against it.

I find the tenant terminated his tenancy and vacated according to the lease on April 30, 2014. I find the landlord had no right to cash his rent cheque for May so I find the tenant is entitled to recover the rent for May and the overdraft fees of \$41.01 charged to him because of the landlord's action. I find the tenant's oral evidence well supported by the copy of the bank records.

In respect to the plumbing repair, I find that it is normally a landlord's responsibility to attend to plumbing repairs which are the result of normal wear and tear according to Residential Policy Guideline #1. I find a pop up rod and tub stopper would fall into this category so I find the tenant entitled to recover his cost to replace these items in the amount of \$36.60 as invoiced. However, I find the tenant had agreed to a deduction of \$50 from his security deposit for a tub stopper and I decline to reverse this charge to which he agreed.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

**Calculation of Monetary Award**

Balance Original Security deposit	439.16
Double balance of security deposit	439.16
Refund May rent cheque	1000.00
Overdraft fees	41.01
Compensation for plumbing	36.60
Filing fee	50.00
Total Monetary Order to Tenant	2005.93

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: August 06, 2014

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Residential Tenancy Branch

