



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EASY RENT REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD OLC RPP FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for an order directing the landlord to return the tenant's personal property, for the landlord to comply with the *Act*, regulation or tenancy agreement, and for a monetary order for the return of double his security deposit.

The tenant and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they received documentary evidence from the other party prior to the hearing. I find the parties were served in accordance with the *Act*.

### Preliminary and Procedural Matter

At the outset of the hearing, the tenant confirmed that he vacated the rental unit on July 31, 2013. The tenant's application for the return of his personal property and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, were dismissed as the tenant failed to provide any details regarding these portions of his application for dispute resolution.

Given the above, the hearing continued with consideration of the tenant's application for double the tenant's security deposit and for the recovery of the tenant's filing fee.

### Issues to be Decided

- Is the tenant entitled to the return of double his security deposit under the *Act*?
- Is the tenant entitled to the recovery of his filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on April 1, 2012, and reverted to a periodic, month to month tenancy agreement after March 31, 2013. Monthly rent in the amount of \$1,995.00 was due on the first day of each month. The tenant paid a security deposit of \$997.50 at the start of the tenancy, which the landlord continues to hold.

The parties agree that the tenant vacated the rental unit on July 31, 2013. The tenant stated that he mailed his written forwarding address in a letter to the landlord dated December 3, 2013. The agent confirmed that the tenant's written forwarding address was received at the office of the landlord on December 8, 2013. The agent confirmed that the landlord did not return the tenant's security deposit or claim towards the tenant's security deposit since receiving the tenant's written forwarding address on December 8, 2013. The agent testified that the landlord did not have written permission from the tenant to retain any portion of the tenant's security deposit of \$997.50 and continues to hold the tenant's security deposit. The agent confirmed that a move-out condition inspection report was not completed at the end of the tenancy.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

**Tenant's claim for the return of double his security deposit** – The parties agree that the tenant vacated the rental unit on July 31, 2013. The parties also agree that the tenant provided his written forwarding address to the landlord, which was received on December 8, 2013. The agent confirmed that the landlord continues to hold the security deposit of the tenant, has not filed an application to retain the security deposit, was not given permission by the tenant to keep any portion of the security deposit and do not have an order from an Arbitrator giving them permission to retain any portion of the security deposit. Section 38 of the *Act* applies which states:

**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.**

[my emphasis added]

In the matter before me, **I find** that the landlord did not repay the security deposit or make an application for dispute resolution claiming against the security deposit. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on December 8, 2013, having not made a claim towards the security deposit. Therefore, **I find** the tenant has met the burden of proof and is entitled to the return of double his original security deposit of \$997.50 for a total of **\$1,995.00**. This amount represents the original \$997.50 security deposit doubled to \$1,995.00 due to the landlord breaching section 38 of the *Act*. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy.

In addition to the landlord breaching section 38 of the *Act*, I note that the landlord also failed to complete a move-out condition inspection report in accordance with section 35 of the *Act*. As a result, **I caution** the landlord to comply with section 35 of the *Act* in the future.

As the tenant's application had merit, **I grant** the tenant the recovery of their filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of **\$2,045.00**, comprised of \$1,995.00 for the return of the tenant's doubled security deposit, plus \$50.00 for their filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$2,045.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenant has established a total monetary claim of \$2,045.00 as described above. The tenant has been granted a monetary order under section 67 in the amount of \$2,045.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I dismiss the remainder of the tenant's application without leave to reapply due to insufficient details.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2014

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Residential Tenancy Branch

