



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This is an application filed by the tenant for a monetary order for the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. The landlord did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the tenant's notice of hearing package and her submitted documentary evidence, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

### Background and Evidence

The tenant stated that she moved out of the rental unit on February 28, 2014 and provided her forwarding address in writing to the landlord on March 1, 2014 requesting the return of her \$1,025.00 security deposit. The landlord stated that he is not sure when the tenant moved out or when the forwarding address in writing was received, but cannot dispute the dates provided by the tenant. The landlord confirmed that as of the date of this hearing that no deposit has been returned to the tenant.

### Analysis

Section 38 of the Residential Tenancy Act states,

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I accept the undisputed testimony of both parties and find that the tenant has established a claim for the return of double the security deposit. The landlord confirmed that he did not return the \$1,025.00 security deposit as of the date of this hearing. The landlord did not dispute the tenant's claim that the tenancy ending on February 28, 2014 or that the forwarding address in writing was received on March 1, 2014 requesting the return of the security deposit. The landlord confirmed that he received the tenant's forwarding address in writing, but was not sure of when he received it.

I find that the landlord has failed to comply with Section 38 of the Act by not repaying the \$1,025.00 security deposit within 15 days after the end of the tenancy or when he received the tenant's forwarding address in writing, nor did the landlord file an application within the 15 day timeline to dispute the return. As such, the tenant has established a claim for the return of the \$1,025.00 security deposit and as well, \$1,025.00 for failing to comply with Section 38 (6) of the Act. The tenant is granted a monetary order for \$2,050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenant is granted a monetary order for \$2,050.00.

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 07, 2014

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Residential Tenancy Branch

