



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JENNY HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC MNSD 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 the return of her security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of her filing fee.

The tenant, an agent for the landlord (the "agent"), and a witness for the landlord appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

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

### Issues to be Decided

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

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A period, month to month tenancy agreement began on July 1, 2013 and ended on September 30, 2013, when the tenant vacated the rental unit. Monthly rent in the amount of \$750.00 was due on

the first day of each month. A security deposit of \$375.00 was paid by the tenant at the start of the tenancy.

The parties agreed that the tenant vacated the rental unit on September 30, 2013. The agent confirmed receiving the tenant's written forwarding address by registered mail on April 26, 2014. The agent testified that the landlord did not have written permission of the tenant to withhold the \$220.00 portion of the tenant's security deposit. The parties agreed that the tenant received \$155.00 of her \$375.00 security deposit after the tenancy ended. The tenant is seeking the return of double the \$220.00 portion withheld by the landlord without her permission under the *Act*, plus the recovery of her filing fee.

The agent confirmed that the landlord did not submit an application for dispute resolution claiming towards the tenant's security deposit. The landlord did not return the tenant's full security deposit within 15 days of receiving the tenant's written forwarding address on April 26, 2014 and confirmed that \$220.00 was withheld from the tenant's security deposit without her written permission.

The tenant filed her application on May 7, 2014 and confirmed during the hearing that if she is entitled to double the balance of her security deposit under the *Act* she is not waiving her right to double the balance of her security deposit.

### Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

**Tenant's claim for the return of double the balance of her security deposit** – The parties confirmed that the tenancy ended on September 30, 2013 when the tenant vacated the rental unit. The parties agree that the tenant did not agree in writing to surrender any portion of her security deposit to the landlord. The landlord returned \$155.00 of the tenant's \$375.00 security deposit, resulting in the landlord retaining \$220.00 of the tenant's security deposit, without the written permission of the tenant, and without having had applied for dispute resolution claiming towards the tenant's security deposit.

There is no dispute that the tenant received \$155.00 from the landlord after the tenancy ended. Section 38 of the *Act* applies and 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.**

(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.

(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 tenant's full security deposit within 15 days of April 26, 2014, which is the date the agent confirmed receiving the tenant's forwarding address in writing by registered mail as the landlord had not submitted an application for dispute resolution claiming against the balance of the tenant's security deposit.

As the tenant has already received \$155.00 of her security deposit, I find that the landlord had until May 11, 2014 to return the tenant's security deposit balance of \$220.00, which the landlord failed to do.

As a result, I find the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit balance of \$220.00 within 15 days of April 26, 2014, having not made a claim towards the security deposit and without written permission to retain the \$220.00 withheld by the landlord. Therefore, **I find** the tenant is entitled to the return of double her security deposit balance of \$220.00, for a total of **\$440.00**.

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 monetary claim in the amount of **\$490.00**, comprised of the \$440.00 in compensation for a doubled security deposit balance of \$220.00, plus the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$490.00**. 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's application had merit. The tenant has been granted a monetary order under section 67 in the amount of \$490.00. 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.

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: September 08, 2014

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Residential Tenancy Branch

