



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's application for return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Disposition of the security deposit.

### Background and Evidence

The tenancy commenced October 2013 and the tenant paid a security deposit of \$300.00. The tenancy ended at the end of April 2013. The landlord did not prepare condition inspections reports. The tenant did not authorize the landlord to make any deductions from the security deposit.

The tenant submitted that he sent an email to the landlord on May 1, 2014 with his forwarding address. The tenant stated the landlord did not respond to the email. The landlord stated she could not confirm nor deny receiving the email.

The landlord explained that some cleaning was required to the rental unit and the tenant would not agree with her proposal for very modest deduction of \$20.00 for cleaning. Then the tenant filed this Application for Dispute Resolution on May 21, 2014. The landlord continues to hold the security deposit pending the outcome of this proceeding.

At the hearing the tenant was not agreeable to any deductions from the security deposit for cleaning.

### Analysis

Unless a landlord has a legal right to retain all or part of the security deposit for one of the reasons provided by the Act, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution within 15 days after the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever date is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

A landlord's legal right to retain all or part of the security deposit may be established where the landlord has the tenant's written authorization to make deductions or the authorization of an Arbitrator, or where the tenant has extinguished his right to its return. In this case, I find the landlord did not establish that any of these circumstances applied. Rather, I find the landlord extinguished her right to make any claim against the security deposit for damage to the rental unit since she failed to prepare condition inspection reports.

Nevertheless, until a landlord receives a tenant's forwarding address in writing, the landlord is not required to take action with respect to the security deposit.

The Act provides that where one party gives the other party a document it must be given in one of the ways permitted under section 88 of the Act. Section 88 of the Act does not permit electronic transmission except for facsimile. I find the email to which the landlord did not reply is insufficient to establish that the tenant provided a forwarding address to the landlord in writing in a manner that complies with section 88 prior to filing this Application for Dispute Resolution. Therefore, I find the tenant was pre-mature in filing this Application and I make no award for doubling of the security deposit.

Considering the tenant filed this Application, putting the landlord on notice that he seeks return of the security deposit and the landlord has not filed to claim against the security deposit despite receiving a service address for him on the Application, in order to resolve this dispute concerning disposition of the security deposit, I order the return of the security deposit to the tenant and the landlord retains the right to file her own Application within two years of the tenancy ending if she wishes to pursue the tenant for cleaning costs.

I further award the tenant recovery of the filing fee under section 72 of the Act.

In light of the above, the landlord is ordered to pay the tenant \$350.00 and the tenant is provided a Monetary Order for this amount to serve and enforce if necessary.

Conclusion

The landlord is ordered to pay the tenant \$350.00. The tenant has been provided a Monetary Order for this amount to serve and enforce if necessary. The landlord retains the right to file her own Application against the tenant within two years of the tenancy ending.

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: September 25, 2014

---

Residential Tenancy Branch

