



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **CORRECTED DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

### **Preliminary Issue(s)**

#### **Respondents**

At the commencement of the hearing, the person appearing on behalf of the landlord pointed out that, although he was named in the style of cause as one of the two respondent/landlords, he is not a co-landlord of the unit. The agent stated that he is appearing in order to represent his son, the only landlord, who was the other person named as respondent/landlord in the application.

The style of cause is hereby amended to exclude the landlord's father who is merely appearing as agent of the landlord.

#### **Request for Adjournment**

The agent of the landlord, made a verbal request for an adjournment of the hearing because the landlord has recently filed his own application claiming damages against the tenant's security deposit. No written request for an adjournment was received prior to this hearing.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *“written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.”*

In this instance, the tenant filed their application on May 10, 2014 and the hearing was scheduled for today, September 15, 2014. The landlord apparently made his application less than 3 weeks ago.

In some circumstances proceedings can be adjourned after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that the Dispute Resolution Officer must look at the oral or written submissions of the parties to:

- consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; and
- weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

I find that the respondent landlord had never made a written request and nothing was served at least 3 days prior to the hearing on the other party and the Residential Tenancy Branch.

Accordingly, I find that there is not sufficient justification under the Act and Rules of Procedure to grant the landlord's request for an adjournment.. The hearing then proceeded as scheduled.

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

Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began on March 1, 2013. The rent was \$1,310.00 and a security deposit of \$655.00 is being held. The tenancy ended on February 27, 2014 and the written forwarding address was provided to the landlord at that time.

The landlord testified that they did not refund the security deposit after the tenant moved out, but tried to get in touch with the tenant by phone and email to discuss the matter. The landlord also pointed out that the tenant had stated in writing that the landlord had permission to deduct a fee of \$1.51 for costs related to a cheque that failed to clear during the tenancy.

The tenant testified that the landlord did not refund the tenant's remaining security deposit within 15 days of the tenancy ending and the forwarding address being provided. The tenant is claiming a refund of double the remaining security deposit.

### **Analysis**

In regard to the return of the security and pet damage deposits, I find section 38 of the Act is clear. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the written forwarding address, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing that the landlord can keep it to satisfy a liability at the end of the tenancy. I accept that this did not occur and the landlord was given written authorization to retain \$1.51 from the \$655.00 security deposit, thereby leaving a remaining balance of \$653.49 still held by the landlord on behalf of the tenant.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord must pay the tenant double the amount of the security deposit or pet damage deposit still being held.

I accept the landlord's testimony that they have since applied for Dispute Resolution seeking damages against the tenant. However, the landlord's application was made more than 15 days after the tenancy ended and the forwarding address received and that matter is scheduled to be heard in the future. No cross application from the landlord is before me at this time and I must only deal with the tenant's application.

I find that the landlord's failure to pay back the entire amount of the tenant's security deposit entitles the tenant to be paid double the remaining deposit. In this instance, I find that the amount to be refunded is \$1,306.98, which is double the \$653.49. I find that the tenant is therefore entitled to a monetary order for \$1,356.98, comprised of \$1,306.98 and the \$50.00 cost of filing the application.

Accordingly, I hereby issue a monetary order to the tenant in the amount of \$1,356.98. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The tenant is successful in the application and is awarded a monetary order for double the portion of the security deposit retained by the landlord.

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 15, 2014

**Corrected : October 15, 2014**

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Residential Tenancy Branch

