



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JRK INVESTMENT MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord.

Both parties appeared at the hearing and the Tenant was assisted by an Advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

### Background and Evidence

The tenancy began in January of 2002, and the Tenant paid the Landlord a security deposit of \$312.50 on December 19, 2001. The Tenant vacated the premises on June 15, 2014.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by giving it to the Landlord on May 14, 2014. The Landlord did not dispute receipt of the forwarding address of the Tenant.

The Tenant did not sign over a portion of the security deposit.

The Agent for the Landlord explained that they had purchased the building from the prior owner, who entered the tenancy agreement with the Tenant.

The Tenant testified that the former owner did not perform an incoming condition inspection report. The Tenant further testified that the present Landlord did not perform an outgoing condition inspection report. The Act requires these reports to be in writing and in the approved form.

The Agent testified the Tenant had left the rental unit and after 10 years it required "industrial" cleaning. He later explained that it was just a regular cleaning for someone who had lived in a rental unit for more than 10 years. Nevertheless, the Agent agreed that the Landlord was guilty of a breach of the Act.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38 of the Act.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it in writing, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$636.40**, comprised of double the security deposit (2 x \$312.50) and the interest of \$11.40 accumulated since December of 2001.

### Conclusion

The Landlord is in breach of section 38 of the Act and must repay the Tenant double the security deposit and the interest due. The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as 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: November 06, 2014.

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Residential Tenancy Branch

