



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for return of all or a portion of her security deposit, pursuant to section 38.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. At the outset of the hearing, the landlord stated that English was not her first language and she may have trouble with understanding certain difficult and uncommon expressions. I offered the landlord the opportunity to use her own translator to interpret at this hearing, to which she confirmed that she did not require one, as she had a good understanding of English. I told the landlord to advise me if she required clarification or repetition of any discussion during this hearing and she agreed to do so.

The tenant testified that she served the landlord with the Application for Dispute Resolution hearing package ("Application") on July 14, 2014, by registered mail. She provided a receipt and tracking number with her Application. The landlord confirmed that she received the Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the Application as declared by the parties, above.

The landlord testified that she served the tenant with her written evidence package on November 12, 2014, by registered mail. She provided a tracking number orally during the hearing. The tenant confirmed that she received the landlord's package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's written evidence package as declared by the parties, above. The tenant testified that she reviewed the landlord's written evidence package in sufficient time to prepare for this hearing and was agreeable to continuing with this hearing on the basis of the written evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of her full security deposit?

Background and Evidence

Both parties testified that this periodic tenancy began on January 31, 2014 and ended on May 31, 2014. Both parties stated that the tenancy length was flexible, although the tenant understood that it was to last for three to four months, while the landlord understood that the tenant could remain as long as she wanted. The landlord was out of the country and returned for the last month and a half of this tenancy. The landlord testified that she sublet her own one bedroom unit in a two-bedroom basement suite of a house, to the tenant. She states that she did not have permission to sublet her rental unit to the tenant, from the landlord/realtor of the house. In any event, I find that a tenancy was created here, as both parties admit that there was an oral tenancy agreement made in January 2014.

Both parties testified that no written tenancy agreement exists for this tenancy. Monthly rent in the amount of \$725.00 was payable on the first day of each month. The rental unit was provided in a furnished condition. The landlord testified that she permitted the tenant to move into the rental unit on January 31, 2014, and pay rent commencing on February 1, 2014. Both parties testified that a security deposit of \$350.00 cash was paid by the tenant to the landlord on January 11, 2014, in person at the rental unit, and the landlord continues to retain this security deposit in full.

Both parties testified that the tenant paid her monthly rent in full for each month during the tenancy. The tenant initially only paid \$375.00 to the landlord for May 2014 rent. However, when the landlord requested a full rent payment, stating that she would not accept the security deposit of \$350.00 to be used towards May 2014 rent, the tenant made another payment of \$350.00 on May 5, 2014. The landlord confirmed that the tenant paid this additional \$350.00 upon her request, and accepted it as a full May 2014 rent payment.

The tenant vacated the rental unit on May 31, 2014, upon providing notice, which was accepted by the landlord. The tenant provided a forwarding address to the landlord in a letter, dated June 13, 2014. She sent this letter via registered mail, for which she provided a computer printout confirmation of the tracking number and the landlord's signature upon delivery on June 19, 2014, which was included in her Application. The landlord testified that she received the tenant's forwarding address by registered mail on June 19, 2014. The landlord testified that she was living in Vancouver at a friend's

house, about 11 to 12 blocks from the rental unit, from mid-April 2014 until June 1, 2014.

Both parties testified that when the tenant moved into the rental unit, no condition inspection was performed, nor was a condition inspection report completed.

The tenant advised the landlord via email on April 29, 2014, which was over a month before the tenant vacated the rental unit, that her security deposit could not be used for damage unless a move-in inspection was done and signed by both parties. The landlord replied in her email to the tenant, dated April 20, 2013, that she was “sure you’ll get your full deposit back just like all my former roommates had.”

Both parties testified that when the tenant moved out of the rental unit, no condition inspection was performed, nor was a condition inspection report completed. The landlord admitted that the tenant had offered her opportunities to complete a move-out inspection on two to three different occasions. In her email to the tenant on May 28, 2014, the landlord advised the tenant that she “won’t read any further emails or texts from you,” that the tenant could move whenever she chose without informing the landlord, that the tenant should leave her keys with her roommate, and that the landlord would not discuss the security deposit any longer and to “wait for my email transfer.” The tenant interpreted this to mean that she would receive her security deposit via email transfer, which was the method that rent was paid during this entire tenancy term.

### Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, agreements and reports, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of a tenant’s security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant’s written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(3)(b)) or if an amount at the end of the tenancy remains unpaid (section 38(4)(a)).

The tenant seeks the return of her full security deposit, in the amount of \$350.00 from the landlord.

The landlord provided conflicting testimony throughout the hearing. She testified that she did not intend to return the security deposit, which was confirmed in her email of May 28, 2014: "that is actually the biggest reason why I can't and won't return your deposit on your departure." Later, she maintained that she meant that she did not intend to return the security deposit in full in cash on the day that the tenant vacated the rental unit. The landlord testified that she did not review the *Act*, but at other times stated that she reviewed certain provisions of the *Act*, regarding security deposits. She stated that she consults with her friends who are "experts" in landlord and tenant matters. She stated that she is aware of her legal right to retain the tenant's security deposit for damage to the rental unit and to keep the deposit for 15 days to determine the damage. The landlord said that she did not provide another former tenant with her security deposit at the end of that tenancy.

The landlord states that she did not return any of the tenant's security deposit because she was entitled to a portion of it, in the amount of \$142.68. She maintained this position at the hearing, stating that she was only claiming \$142.68 in damage against the security deposit of \$350.00. Both parties provided an email, dated June 26, 2014, from the landlord to the tenant, outlining the costs being claimed by the landlord. The landlord states in that email "\$207.32 is what I owe you to return you the deposit." Both parties testified that the tenant did not agree with the damage costs being claimed by the landlord, which was documented in an email from the tenant to the landlord on June 26, 2014. The landlord testified that although the tenant was entitled to the return of \$207.32, she did not return it to the tenant because the tenant did not agree with her entitlement to damage costs. The landlord further testified that the tenant had filed an Application for dispute resolution so she was waiting for the outcome of this hearing before returning any of the deposit. I advised the landlord that the tenant's Application had not even been filed with the RTB or set for a hearing as of June 26, 2014, as the Application was filed on July 7, 2014 and the landlord was aware of that fact after July 14, 2014, the date the tenant mailed out her Application via registered mail. The landlord then testified that she had anticipated that the tenant would "sue" her or file an application for dispute resolution and so she was waiting for that potential hearing and outcome.

It is undisputed that the tenant did not give the landlord written or oral permission to retain any amount from her security deposit. It is undisputed that no amount of the security deposit has been returned to the tenant, to date, and that the landlord continues to retain the entire \$350.00 security deposit. The landlord did not file an

application for dispute resolution to keep the security deposit, at any point prior to this hearing. She maintains that she did not want to deal with this issue because it caused her stress, that it was too costly for her to file an application over a \$350.00 security deposit, and that she was ill.

The landlord continues to hold the tenant's security deposit of \$350.00. Over that period, no interest is payable on the landlord's retention of the deposit. The tenant provided her forwarding address to the landlord, who received it on June 19, 2014. The landlord has not made an application for dispute resolution, to date. In accordance with section 38(6)(b) of the *Act*, the tenant is entitled to double the value of her security deposit of \$350.00 from the landlord, in the total amount of \$700.00.

### Conclusion

I issue a monetary Order in the tenant's favour against the landlord, which allows the tenant an award of double her security deposit of \$350.00, for the total amount of \$700.00.

The tenant is provided with a monetary order in the amount of \$700.00 in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 17, 2014

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Residential Tenancy Branch

