



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application pursuant to section 72.

### **SERVICE**

Both parties attended the hearing and the tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and the landlord agreed he had received it. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

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

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$700 in 2006 and agreed with the landlord that it was on August 13, 2006. Rent was \$1400 a month and the tenancy commenced September 1, 2006. The tenant vacated the unit on September 22, 2014 and said they provided their forwarding address in writing in an envelope with the keys on September 22, 2014 in the unit mailbox as instructed by the landlord. The landlord said he never got the forwarding address in writing but had received it verbally on October 17, 2014 in a telephone call. The tenant challenged this and submitted that he sent them a letter regarding damages earlier in October so he had their address. The tenant said that the landlord's wife had called and said she lost the address and they again emailed it to her on October 21, 2014. The landlord then agreed that he maybe got the address this way. The tenant's deposit has never been returned and they gave no permission to retain any of it.

The landlord said he retained the deposit for the tenant had caused damage to the unit; he expected his Application to be heard at this time also but his file was not on my schedule so I advised the office of the problem for rescheduling and I pointed out to the parties that when monetary orders were obtained, they could offset them against each other.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

The Residential Tenancy Act provides:

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.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that they paid \$700 security deposit on August 13, 2006 as it is corroborated by the landlord. I find they vacated on September 22, 2014 and provided their forwarding address in writing either in the mail box or by email to the landlord's wife and this was received by the landlord by October 21, 2014 at the latest. I find this evidence credible as the landlord did send them a letter to their new address and agreed in the hearing that he maybe got the address by email. I find the tenant gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit.

Although the landlord has filed an Application, he said in the hearing that he filed it late in December which is well beyond the 15 day period allowed in section 38 of the Act so whether or not he obtains a decision in his favour does not affect the tenant's rights under section 38 of the Act. I find the tenant entitled to recover double the security deposit.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original deposit with interest	722.57
Twice original deposit	700.00
Filing fee	50.00
Total Monetary Order to Tenant	\$1472.57

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: January 07, 2015

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Residential Tenancy Branch

