



# 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.

### **SERVICE**

The landlord did not attend the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and personally with her forwarding address. It was verified online that the Application was successfully delivered. 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 she is entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Only the tenant attended although the landlord was served with the Application/Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$350 on September 29, 2014 and agreed to rent the unit for \$700 a month. The tenant vacated the unit on December 27, 2014; she said a condition inspection report was done then, she provided her forwarding address in writing and the landlord said he would send her full security deposit back. She emailed him two weeks later and he said he mailed the cheque and it had been cashed; she asked for a copy of the bank statement as proof but received nothing. The tenant's deposit has never been returned and she gave no permission to retain any of it.

The landlord submitted no documents to rebut the tenant's Application.

On the basis of the documentary and 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 she paid \$350 security deposit on September 29, 2014, gave the landlord personally her forwarding address in writing at the inspection on December 27, 2014 and vacated on December 27, 2014. I find she gave no permission for the landlord to retain the deposit and has not received the refund of her security deposit although the landlord alleged he had sent it to her. I find her entitled to a refund of double her deposit in accordance with section 38 of the Act.

**Conclusion:**

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

Original Deposit (no interest 2014-15)	350.00
Double deposit	350.00
Filing fee	50.00
Total Monetary Order to Tenant	750.00

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: February 17, 2015

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Residential Tenancy Branch

