



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

The tenant applies to recovery an \$800.00 security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to the relief claimed?

### Background and Evidence

The rental unit is a two bedroom suite in the lower portion of a house. The tenancy started in October 2012. It ended in the summer of 2014. It appears the tenant vacated on July 6, 2014. The monthly rent was \$1600.00. The landlords continue to hold the \$800.00 security deposit.

The tenant first made her application in September 2014, however, it was not served on the landlords at that time. She applied again with this application issued January 27, 2015. It was received by the landlords through registered mail on January 27, 2015.

The landlords have not made application to retain all or any portion of the deposit. At this hearing they attempted to advance a claim for use and occupation money, cleaning and repair costs, however they were informed that in order to do so they were required to make their own application for dispute resolution, formally setting out their claim and providing particulars to the tenant.

The landlords claim that the tenant has given her written authorization to retain a portion of the deposit for use and occupation money for the first five days of August 2014.

Analysis

Section 38 of the *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.**

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

**(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.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

*(my emphasis)*

I find that the tenant provided her forwarding address in writing to the landlords when she served them on January 27, 2015 with the application for dispute resolution. It contains the address at which material may be given to her.

The landlords did not either repay the deposit money or make their own application to keep it within the 15 day period provided for in s. 38(1), above.

I find that the landlords did not have the tenant's authorization in writing to keep any portion of the deposit. At the end of the tenancy the tenant offered to settle the matter of the deposit by agreement to pay for five days of occupation. That offer was not accepted by the landlords by payment of the remainder of the deposit. They cannot now revive the offer and, as an unaccepted offer of settlement, it cannot be used as an admission of liability.

### Conclusion

As the landlords do not have the tenant's written authorization to keep any portion of the deposit and as they have not, as of this date, obtained an order against the tenant, they are obliged to return the deposit.

As the landlords have failed to comply with s. 38 of the *Act*, the tenant is entitled to recover double the deposit. There will be a monetary order against the landlords, jointly and severally, in the amount of \$1600.00.

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: March 13, 2015

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Residential Tenancy Branch

