



# 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 for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Both parties appeared at the hearing. 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.

### Preliminary Issues

The Landlord submitted that the Tenant had served him with the Notice of Hearing and her Application past the three days required under the Act. In evidence the Landlord supplied a copy of the letter sent to the Landlord by the Tenant which was post marked September 24, 2014. I note that the Tenant had filed her Application on August 29, 2014, and received the Notice of Hearing on or about September 3, 2014. I find the Landlord had the Tenant's Application and Notice of Hearing on September 24, 2014.

However, I further note that the evidence the Landlord provided to support his position was also late, contrary to the rules of procedure. In other words, his only proof the Application was served late was contained in his own late evidence.

Nevertheless, pursuant to section 62 of the Act and the rules of procedure, I find that the acceptance of the Landlord's evidence did not prejudice the Tenant, nor did the late

service of the Application and Notice of Hearing prejudice the Landlord, and therefore, I allowed the hearing to proceed and accepted the Landlord's late evidence.

### Issue(s) to be Decided

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

### Background and Evidence

The Tenant paid the Landlord a security deposit of \$650.00 in or about January of 2014. No interest is payable on security deposits paid in 2014. The Landlord testified that he used the standard form tenancy agreement with the Tenant although neither party entered a copy of their tenancy agreement in evidence.

The Tenant vacated the premises on or about July 28, 2014. The Tenant attended the rental unit for a move out inspection on July 31, 2014. The parties were not able to agree on the condition of the rental unit and the Tenant left the rental unit. In evidence the Landlord has provided a copy of the outgoing report which neither party had completed or signed.

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 at the time she was moving out. The Tenant did not sign over a portion of the security deposit.

The Landlord claimed the Tenant had breached a fixed term tenancy agreement and left the rental unit damaged.

The Landlord testified he did not file an Application to claim against the security deposit or against the Tenant for breach of the fixed term, because he believed that he had an oral agreement with the Tenant that he could keep the security deposit in compensation for the breach of the fixed term tenancy.

The Tenant replied that they had no such oral agreement and in fact the Landlord had promised to return the deposit to her if the rental unit was left clean. The Tenant alleged she left the rental unit clean.

### Analysis

During the course of the hearing it was explained to the parties that the alleged condition of the rental unit or the alleged breach of the fixed term tenancy was not an

issue before me, as these types of claims would have to be made in an Application by the Landlord. I note the Landlord is unable to make a monetary claim against the Tenant through the Tenant's Application. I also note that the parties were offered an opportunity to settle the dispute but could not come to an agreement.

Based on the above, on 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.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The standard tenancy agreement that the parties used here sets out the handling of the security deposit and the Landlord failed to follow this portion of the contract. 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 from it, 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.

The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

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 **\$1,350.00**, comprised of double the security deposit (2 x \$650.00) and the \$50.00 fee for filing this Application.

### Conclusion

The Landlord has breached section 38 of the Act as they failed to return the security deposit or claim against it within the 15 days allowed under the Act. Pursuant to section 38 of the Act, I must order the Landlord to pay the Tenant double the security deposit.

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: March 17, 2015

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Residential Tenancy Branch

