



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that she sent the Notice of Hearing Package and the submitted documentary evidence by Canada Post Registered Mail on September 10, 2014. The tenant has provided in her direct testimony that the Package was returned as unclaimed by Canada Post.

The tenant clarified that she is seeking a monetary order for the return of double the security deposit pursuant to section 38(6) of the Act.

At the end of the hearing the tenant stated that she had just moved and now has a new mailing address. The tenant provided the new address in her direct testimony and the tenant's primary mailing address shall be amended to reflect the new address.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of double the security deposit?  
Is the tenant entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The tenant stated that there was no signed tenancy agreement, but that a verbal agreement was made in April of 2013. The tenant stated that this was a month to month tenancy and ended on May 1, 2014. The tenant stated that the monthly rent was \$600.00 payable on the 1<sup>st</sup> Day of each month and a security deposit of \$300.00 was paid in April of 2013. The tenant also stated in her direct testimony that the tenant's forwarding address in writing was given to the landlord on June 16, 2014 requesting the return of the security deposit. The tenant stated that as of the date of this hearing the landlord has not filed an application to dispute the return of the security deposit, nor has the landlord returned it. The tenant stated that no permission was given to the landlord to retain the security deposit.

### Analysis

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 subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, 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.

I accept the undisputed evidence of the tenant and find in this case the tenancy ended on May 1, 2014 and the tenant provided her forwarding address in writing on June 16, 2014 requesting the return of the \$300.00 security deposit.

The landlord did not return the \$300.00 security deposit held in trust within the allowed 15 day timeframe, nor did the landlord make an application for dispute resolution to make a claim against the security deposit. The tenant gave testimony that permission was not given to the landlord to retain the security deposit.

I find that the tenant has established a claim for the return of the \$300.00 security deposit. I also find that the landlord has failed to comply with the Act and is subject to section 38 (6) and is required to pay the tenant an amount equal to the security deposit of \$300.00.

The tenant has established a monetary claim of \$600.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the balance due of \$650.00.

Conclusion

The tenant is granted a monetary order for \$650.00. This order must be served upon the tenant. Should the tenant fail to comply with the 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 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: April 02, 2015

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Residential Tenancy Branch

