



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Amber Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MNDC, MNSD

### Introduction

This hearing dealt with an application by the tenant seeking to the return of double the security deposit and the recovery of the filing fee. Both parties participated in the conference call hearing. The landlords confirmed that they received the tenants' Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that said documents have been served in accordance with the service provisions of the Act and the Rules of Procedure.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on August 1, 2012 and ended on March 31, 2014. The tenants were obligated to pay \$870.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$435.00 security deposit. The tenant stated that he gave the landlords 40 days' notice that he would be moving out. The tenant stated that he gave the landlord his forwarding address in writing at the move out condition inspection.

The landlord did not dispute the testimony as given by the tenant. However, the landlord stated that the tenant was in the midst of a lease, and "broke the lease without consent" and therefore should not be entitled to the return of the deposit.

### Analysis

The landlord stated that she was unaware that she was to file an application if she wished to retain the deposit. It was explained in great detail that today's decision would only address the application as brought forward by the tenant. It was also explained to

the landlord that if there were any remaining unresolved issues between her and the tenant that they could not work out, she was at liberty to file her own application. The landlord indicated that she understood.

The Tenant said he is applying for the return of double the security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

As the landlord has not complied as outlined above, I must order the return of double the security deposit to the tenant in the amount of \$870.00.

The tenant is also entitled to the recovery of the \$50.00 filing fee.

Conclusion

The tenant has established a claim for \$920.00. I grant the tenant an order under section 67 for the balance due of \$920.00. This order may be filed in the Small Claims 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: May 27, 2015

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Residential Tenancy Branch

