



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the tenant for a monetary order for return of double the security deposit and to recover the filing fee for the claim.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

1. Is the tenant entitled to a monetary order for return of double the security deposit?
2. Should the tenant be entitled to recover the fee paid to file the application?

### Background and Evidence

The landlord, who is not the property owner of the rental unit, but a tenant herself, rented a room to the tenant forming a sub-tenancy. The subject tenancy began on November 1, 2013. The landlord confirmed that the tenant paid a security deposit of \$200.00 on or about October 31, 2013. The tenant vacated the premises at the end of July 2014. On September 6, 2014, the tenant provided the landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The testimony of the tenant was that the landlord did not perform neither incoming nor outgoing condition inspection reports.

### Analysis

Based on the above, 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, plus interest.

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, plus interest.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The landlord has breached section 38 of the Act. The landlord, in creating a sub-tenancy, is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

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.

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. 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 or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

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 \$450.00 , comprised of double the security deposit (\$200.00) and the \$50.00 fee for filing this Application.

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 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 07, 2015

