



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

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.

Only the Tenant's agent, L.S. appeared at the hearing. L.S. provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

L.S. testified and supplied documentary evidence that she served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on February 16, 2015, and deemed received under the Act five days later. I find the Landlord has been duly served in accordance with the Act.

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.

### Issue to be Decided

Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenant to return of double the security deposit paid?

### Background and Evidence

The tenancy began on June 1, 2014. Tenant paid the Landlord a security deposit of \$500.00 at the start of the tenancy. The Tenant vacated the premises on November 21, 2014.

L.S. testified that she provided the Landlord with a written notice of the forwarding address to return the security deposit to, by personally delivering it to the Landlord and putting it in his mail box. L.S. could not recall the exact date she delivered the written notice of the Tenant's forwarding address but confirmed it was within 15 days of the end of the tenancy. The Tenant did not sign over a portion of the security deposit.

### 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. 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.

Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenants 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 to 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. 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.

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 **\$1,000.00**, comprised of double the security deposit (2 x \$500.00).

### Conclusion

The Tenant is given a formal Order in the above terms and must serve the Landlord 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: August 28, 2015

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Residential Tenancy Branch

