



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit and the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on May 12, 2015. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to recover the security deposit?
- If so, is the tenant entitled to have the security deposit doubled?

### Background and Evidence

The tenant testified that this tenancy started on August 15, 2014 for a fixed term of a year. In March 2015 the parties sought to end the agreement as the tenant wanted to vacate early and the landlord wanted a family member to move in to the unit. Rent for this unit was \$800.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$400.00 on August 15, 2014.

The tenant testified that he and the landlord only conducted a walkthrough of the unit at the start of the tenancy. The landlord did not complete a move in condition inspection report; however, the tenant did take photos of the unit. The tenant vacated the unit on March 31, 2015 again no inspection report was completed by the landlord but the tenant did later agree by text message that the landlord could keep \$126.00 to clean the carpets again. The tenant gave the landlord his forwarding address in writing on March 31, 2015 and handed this in person to the landlord when the tenant gave back the keys to the unit.

During the hearing the tenant confirmed that the landlord could still keep \$126.00 of the security deposit for carpet cleaning. The tenant testified that the landlord wanted to keep further amounts for cleaning and for two damaged chairs. The tenant disputed that the landlord is entitled to any further claim against the security deposit.

The tenant testified that he now seeks to recover double the security deposit as the landlord did not return it within 15 days of the end of the tenancy and receiving the tenants forwarding address in writing.

### Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all

or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Further to this I refer the parties to s. 23(4) and 35(3) of the *Act* which require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in and out of the unit, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant in full within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on March 31, 2015 and the tenancy also ended on that date. As a result, the landlord had until April 15, 2015 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$800.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenant testified at the hearing that he did not agree in writing that the landlord could keep \$126.00 of the security deposit but did agree by text message. The tenant agreed to still honor this and has orally agreed the landlord may retain \$126.00 from the tenant's monetary award for carpet cleaning.

As the tenant's claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$800.00
Filing fee	\$50.00
Less amount agreed the landlord can keep for carpet cleaning	(-\$126.00)
Total amount due to the tenant	\$724.00

### Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b), 67 and 72(1) of the *Act* in the amount of **\$724.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: September 14, 2015

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Residential Tenancy Branch

