



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for a return of his security deposit and that the security deposit should be doubled.

The tenant, his legal advocate, and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing neither party raised any issues regarding service of the application or the evidence; the landlord confirmed not providing evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a return of a security deposit, doubled?

### Background and Evidence

The tenant submitted without dispute that the tenancy began in October 2013 and ended in December 2013.

The tenant submitted further that his portion of the monthly rent for the rental unit, shared with two other tenants, was \$450.00 and that he paid a security deposit of \$225.00, which the landlord has not returned to him.

The tenant submitted further through testimony and written evidence that the landlord was provided his written forwarding address in letters sent by registered mail on November 27, 2014 and on February 26, 2015. The letters were sent to the landlord by the tenant's legal advocate.

The tenant submitted that he is entitled to his security deposit and that the amount should be doubled, as the landlord has failed to return the security deposit, despite the requests to do so in the above referenced letters.

The tenant's additional relevant documentary evidence included proof of the registered mail service, a letter from the landlord to the tenant's legal advocate, dated December 4, 2014, and a shelter information form listing the landlord and the landlord's agent here as landlord/agent and the tenant's portion of the monthly rent set at \$450.00, \$225.00 as the tenant's portion of the security deposit,

*Landlord's rebuttal-*

The landlord submitted that they received a security deposit from the other two tenants renting the property at the same time as this tenant, but never received a security deposit from the tenant. The landlord submitted further that the rental unit was leased directly to one of the other two tenants, "DF".

The landlord submitted the tenant paid the October rent in cash and that he was issued a receipt, but reaffirmed that he had no record of the tenant paying a security deposit. The landlord submitted further that the shelter information form is not a tenancy agreement, rather an intent-to-rent form signed by the prospective landlord for the tenant to take to the government ministry to obtain rental assistance. The landlord submitted that he asked the tenant several times to produce proof that the tenant paid a security deposit.

*Tenant's surrebuttal-*

The tenant submitted that he does have a receipt for the security deposit payment, although it was not submitted into evidence. The tenant reaffirmed that the government paid the security deposit directly to the landlord.

The tenant's legal advocate questioned the landlord about allowing the tenant to continue to reside in the rental unit if he had not paid a security deposit, with the landlord replying that the residential property was old, expected to be razed soon, and that sometimes they do not collect security deposits from tenants in the older homes.

Analysis

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a

tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In the case before me, as there was a disagreement between the parties whether the tenant paid a security deposit, the applicant/tenant was required to prove on a balance of probabilities that he had in fact paid a security deposit.

The tenant mentioned he had a receipt, presumably for the security deposit, but failed to produce the receipt. Additionally, I find it reasonable that if the security deposit had been paid by the government ministry directly to the landlord, as claimed by the tenant, the record would be readily available to the tenant for submission into evidence.

I also find it reasonable that if the tenant paid the initial monthly rent in cash, the security deposit as well could very well have been paid in cash, rather than a cheque from the government ministry.

Due to the above, I find the tenant submitted insufficient evidence to prove that he had paid a security deposit. I therefore dismiss the tenant's application for a return of his security deposit, doubled.

### Conclusion

The tenant's application is dismissed, without leave to reapply.

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 28, 2015

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Residential Tenancy Branch

