



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the "Act") for a monetary order for return of double the security deposit (the "Deposit").

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.

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.

### Preliminary issue

At the outset of the hearing the landlord's agent indicated that the applicant TS, is not a tenant under the tenancy agreement.

I have reviewed the tenancy agreement filed in evidence, TS is not listed as a tenant. Therefore, I find TS is an occupant and has no legal rights or obligations under the Act. TS was removed from the style of cause.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The tenancy began on September 1, 2014. Rent in the amount of \$675.00 was payable on the first of each month. A security deposit of \$337.50 was paid by the tenant. The parties agreed the tenancy ended on April 30, 2015.

The tenant stated that they provided the landlord with a written notice of the forwarding address on May 8, 2015, as it was written on the move-out condition inspection report.

The tenants stated that although they agreed to some general cleaning, they did not agree to the amount charged and did not authorize the landlord to retain any specific amount from the Deposit. The tenant stated that they were expecting to receive some money back from their security deposit, however, they received a bill for damages in the amount of \$484.83.

The landlord's agent stated that the tenant caused damage to the carpet, which had to be assessed, which was noted in the move-out condition inspection report. The agent agreed that the tenant did not give permission to retain the security deposit and they have not made an application claiming against the deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **Return of security deposit and pet damage deposit**

38 (1) 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.

...

(6) 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.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on May 8, 2015.

I accept the undisputed testimony that the landlord was not given permission to retain the security deposit.

I find the landlord has breached 38(1) of the Act.

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 Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

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.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$675.00**, comprised of double the security deposit (\$337.50) on the original amount held.

The tenant is given a formal monetary order pursuant to 67 of the Act, 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.

#### Conclusion

The tenant's application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: October 01, 2015

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Residential Tenancy Branch

