



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### 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 appeared at the hearing. The Tenant 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.

The Tenant testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on May 6, 2016, 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?

### Background and Evidence

The Tenant paid the Landlord a security deposit of \$400.00 on or about August 2014. The Tenant vacated the premises on November 28, 2014.

By letter erroneously dated January 28, 2014, rather than January 28, 2015, the Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to. The Tenant confirmed she erroneously wrote 2014 rather than

2015. In any case, the Landlord confirmed receipt of her address and request for return of the deposit by emails which were introduced in evidence. In these emails the Landlord indicates she is awaiting an inheritance in order to pay the Tenant her security deposit.

The Tenant did not sign over a portion of the security deposit.

The Tenant testified that although the Landlord's mother did an informal "walk through" the rental unit at the beginning of the tenancy, the Landlord did not perform an incoming condition inspection report in accordance with the Act and regulations. The Tenant further testified that the Landlord did not attend at the rental unit for the outgoing condition inspection report despite the Tenant's request that such an inspection occur.

### 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.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord 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. 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.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims. 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 **\$800.00**, comprised of double the security deposit (2 x \$400.00).

The Tenant is given a formal Monetary 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.

### Conclusion

The Landlord failed to perform incoming or outgoing condition inspection reports as required. The Landlord also failed to return the security deposit, or make an application to retain it within 15 days of the date of receiving the Tenant's forwarding address in writing. Pursuant to section 38 and 67 the Tenant is entitled to return of double the amount paid, and is awarded a Monetary Order in the amount of \$800.00.

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: October 08, 2015

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Residential Tenancy Branch

