



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed June 25, 2015 for a monetary Order for return of double the security deposit, the interest and the filing fee for the claim. The Tenant also sought an Order that the Landlord comply with section 38 of the *Residential Tenancy Act*.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

### Issue to be Decided

Is the tenant entitled to a Monetary Order for return of double the security deposit?

### Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement which provided as follows: the tenancy began on April 1, 2012; monthly rent was payable in the amount of \$1,650.00; the Tenant paid a security deposit of \$825.00 and a pet damage deposit of \$825.00 for a total of \$1,850.00 (the "Deposits").

The Tenant testified that the Landlord did not perform a move in, or move out condition inspection.

The tenant vacated the premises on June 30, 2013. The tenant provided the landlord with a written notice of the forwarding address to return the security deposit to when she sent her notice to end tenancy on May 19, 2013 as well as when she sent a further letter on June 30, 2013. Both of these letters were introduced in evidence by the Tenant. The Tenant did not sign over any portion of the security deposit.

Introduced in evidence was a letter from the Landlord to the Tenant dated July 14, 2013, wherein the Landlord informed the Tenant that the Deposits of \$1,650.00 had incurred \$24.43 in interest. In this letter the Landlord indicated he was returning only \$1,364.01 as he deducted \$60.42 for "Remaining utilities (40 days) and 7 Garbage pickups" and \$250.00 for "Completion of yard work (weeding/cleaning)".

The Tenant advised that the letter from the Landlord included a cheque for \$1,364.01 which was returned N.S.F. The Tenant testified that the Landlord then provided her a replacement cheque on August 13, 2013.

The Tenant submitted a Monetary Order Worksheet wherein she claimed the following:

Double the security deposit due to Landlord's breach of section 38	\$1,650.00
Deduction from Tenant's Deposits for "weeding/cleanup" not agreed to by Tenant	\$250.00
Filing fee	\$50.00
<i>return of interest</i>	-24.43
<b>TOTAL</b>	<b>\$1,925.57</b>

The Landlord agreed that he did not complete a move out condition inspection. He also testified that he received the Tenant's forwarding address in writing.

The Landlord stated that the "yard was a mess" and that the Tenant should not have rented the property if she was not prepared to do the required yard work. The Landlord was informed that he could not make an application for monetary compensation through the Tenant's application.

The Landlord also admitted that the cheque he provided to the Tenant was not honoured by his bank which he says were a result of complications to which he was unaware. He confirmed that he provided her the sum of \$1,364.01 on August 13, 2013.

The Landlord also submitted that he did not apply for dispute resolution as he was waiting for the Tenant to do so.

### Analysis

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

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 Deposits.

Further, by failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the Deposits, pursuant to sections 24(2) and 36(2) of the Act.

The Deposits are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the Deposits through the authority of the *Residential Tenancy Act*, such as an Order from an Arbitrator or written agreement of the Tenant. Here the Landlord did not have any authority under the *Residential Tenancy Act* to keep any portion of the Deposits. Therefore, I find that the Landlord is not entitled to retain any portion of the Deposits.

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 Deposits. The legislation does not provide any flexibility on this issue.

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 \$3,350.00, comprised of double the pet damage deposit and security deposit (\$1,650.00 x 2 = \$3,300.00) and the \$50.00 fee for filing this Application.

The parties agree that the Landlord has paid the Tenant the sum of \$1,364.01.

Accordingly, the Tenant is entitled to **\$1,995.99** calculated as follows:

Double the security deposit due to Landlord's breach of section 38 $\$1,650.00 \times 2 = \$3,300.00$	\$3,300.00
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Recovery of filing fee	\$50.00
Tenant's total entitlement	\$3,350.00
<i>Less amount paid to Tenant August 13, 2013</i>	<i>\$1,364.01</i>
<b>TOTAL OWING TO TENANT</b>	<b>\$1,995.99</b>

### Conclusion

The Tenant is entitled to return of double the security deposit paid and recovery of the filing fee. As the Landlord paid some funds to the Tenant in August of 2013, the Tenant is entitled to a further **\$1,995.99** in monetary compensation.

The Tenant is given a formal Monetary Order in the above terms must serve the Landlord 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 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: December 22, 2015

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Residential Tenancy Branch

