



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of double his security deposit under the *Act*, and to recover the cost of the filing fee.

The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on June 30, 2015. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the service address for the landlord provided by the landlord on the tenancy agreement. The tenant testified that the registered mail package was successfully signed for and delivered on July 10, 2015, which is supported by the online registered mail tracking information. I find the landlord was duly served as of July 10, 2015, the date the registered mail package was signed for and accepted.

### Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on October 15, 2014. Monthly rent in the amount of \$1,250.00 was due on the first day of each month. A security deposit of \$625.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold. The tenant stated that incoming and outgoing condition inspection reports were not completed by the landlord.

The tenant testified that he vacated the rental unit on March 30, 2015. The tenant stated that he provided his written forwarding address to the landlord by registered mail on May 22, 2015, and that the registered mail package was signed for and accepted on May 26, 2015. This was supported by the online registered mail information. A copy of the tenant's written forwarding address was submitted in evidence.

The tenant stated that he has not signed over any portion of his security deposit to the landlord and he has not been served with any application from the landlord claiming towards his security deposit.

### Analysis

Based on the documentary evidence and the tenant's undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

The tenant testified that he vacated the rental unit on March 30, 2015 and that on May 22, 2015; he mailed his written forwarding address to the landlord, which was signed for on May 26, 2015. The tenant stated that the landlord has failed to return his security deposit. Section 38 of the *Act* applies which states:

#### **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.**

[my emphasis added]

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 the written agreement of the tenant. In the matter before me, I find the landlord received the written forwarding address from the tenant by registered mail on May 26, 2015, and did not file an application for dispute resolution claiming towards the tenant's security deposit and the landlord did not have any authority under the *Act* to keep any portion of the security deposit as the tenant did not authorize the landlord to retain any portion of the security deposit.

Given the above, I find the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit in full or submitting an application claiming towards the tenant's security deposit within 15 days of receiving the forwarding address of the tenant in writing on May 26, 2015. Therefore, I find the tenant is entitled to the return of double his original security deposit of \$625.00, which as accrued no interest since the start of the tenancy, for a total of **\$1,250.00**.

As the tenant's claim had merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$50.00**.

I find that the tenant has established a total monetary claim of **\$1,300.00** comprised of \$1,250.00 for double the original security deposit, plus the \$50.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$1,300.00**.

### Conclusion

The tenant's claim is successful. The landlord has breached section 38 of the *Act*.

The tenant has been granted a monetary order under section 67 in the amount of \$1,300.00 as described above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: December 18, 2015

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Residential Tenancy Branch

