



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNSD, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit less the amount refunded. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is the tenant entitled to doubling of the security deposit?

### Background and Evidence

The landlord and tenant entered into a verbal tenancy agreement that commenced on June 15, 2014. The tenant paid a security deposit of \$675.00 and was required to pay rent of \$1,375.00 on the 15<sup>th</sup> day of every month. The tenant gave a written notice to end tenancy to the landlord on September 28, 2015. The tenant did not pay rent on October 15, 2015 and vacated the rental unit on October 30 or 31, 2015. I heard that the landlord and tenant participated in a move-in inspection together but a move-out inspection was not scheduled or proposed with the tenant. The landlord did not prepare condition inspection reports at the beginning or end of the tenancy. The tenant did not authorize the landlord to retain any part of the security deposit in writing.

The tenant met the landlord's husband at his place of business after the tenancy ended for purposes of picking up a cheque for the security deposit. The landlord's husband presented her with a cheque for only \$405.00 which she did not accept.

The tenant provided a forwarding address to the landlord in writing by way of a letter dated November 23, 2015. The letter was mailed to the landlord. The landlord received the letter in the few days that followed and on November 27, 2015 prepared a written response to the tenant. The landlord's letter and a cheque for \$405.00 were received at the tenant's forwarding address in early December 2015.

After filing her Application for Dispute Resolution the landlord sent the tenant a cheque for the remainder of the security deposit in the amount of \$270.00. The tenant has not cashed the cheque and communicated to the landlord that the tenant was not accepting the payment in settlement of this dispute.

The landlord's agent submitted that the forwarding address appearing on the tenant's letter of November 23, 2015 belongs to an advocacy agency and is not the tenant's residence.

The landlord's agent also attempted to introduce evidence with respect to damage to the rental unit and receiving inadequate notice to end tenancy from the tenant. The tenant was not interested in settlement discussions during the hearing and since the landlord had not filed an Application for Dispute Resolution against the tenant I precluded the parties from presenting any further evidence with respect to the landlord's potential claims against the tenant. Rather, the parties were informed that the landlord retains the right to file an Application for Dispute Resolution if the landlord intends to pursue the tenant for damages or losses related to this tenancy.

### Analysis

Unless a landlord has a legal right under the Act to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the security deposit. Rather, it was apparent to me that the landlord extinguished the right to claim against the deposit for damage by failing to prepare a move-in inspection report. Further, it was undeniable that the tenant did not authorize the landlord to retain any part of the deposit in writing.

In order to establish an entitlement to return of the security deposit the tenant must demonstrate that the landlord was provided with a forwarding address in writing. A forwarding address is any address where the tenant may receive documents and there is no requirement that the forwarding address be the same as a person's residential address. Accordingly, I found the landlord's submissions that the tenant's forwarding address is the location of an advocacy agency is of no consequence.

Based upon the evidence before me, I am satisfied the landlord had been provided the tenant's forwarding address in writing on or before November 27, 2015 since this is the date the landlord responded by way of a letter. Accordingly, the landlord had 15 days from this date to either gain the tenant's written consent for deductions; file an Application for Dispute Resolution to claim

against the deposit; or refund the full amount of the deposit to the tenant. The landlord failed to comply with any one of these options. Therefore, I find the tenant entitled to doubling of the security deposit as requested.

I further award the tenant recovery of the \$100.00 filing fee she paid for this Application.

Considering the tenant is in possession of a cheque in the amount of \$270.00 but the cheque has not yet been cashed, the amount of \$270.00 is not reflected in the calculation below. However, should the tenant cash the cheque the tenant may only enforce the remaining balance of the Monetary Order against the landlord.

The Monetary Order provided to the tenant with this decision is calculated as follows:

Security deposit x 2 (\$675.00 x 2)	\$1,350.00
Less: partial payment already received	(405.00)
Plus: recovery of filing fee	<u>100.00</u>
Monetary Order	\$1,045.00

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the sum of \$1,045.00 to serve and enforce as necessary. This amount does not reflect that a cheque from the landlord in the amount of \$270.00 that had not yet been cashed of the date of this hearing.

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: March 04, 2016

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Residential Tenancy Branch