



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD, MNDC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought a Monetary Order for return of double the security deposit (plus interest), compensation for the cost of registered mail and recovery of the filing fee for the claim.

Both parties appeared at the hearing. The Landlord was represented by his son, Y.K. Each participant gave affirmed testimony and was 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.

### Preliminary Matter

The Tenant was advised that the cost of registered mail is not recoverable under the *Residential Tenancy Act*.

### Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Should the Tenant recover her filing fee?

### Background and Evidence

The Tenant testified that the tenancy began October 2001. She stated that she paid a security deposit of \$330.00. Introduced in evidence was a copy of the Residential Tenancy Agreement.

The Tenant testified that the tenancy ended October 15, 2014. She initially testified that she provided the Landlord with her forwarding address "within 30 days as required". When I asked her to be more specific she could not answer.

Introduced in evidence was an undated, handwritten document wherein the Tenant wrote:

*"To [Landlord]*

*I can receive mail @*

*Address withheld*

*@ present*

*From [Tenant]*

This document makes no mention of the security deposit.

The Tenant then stated that she sent the handwritten document to the Landlord on May 7, 2015 by registered mail. Introduced in evidence was a registered mail receipt dated May 7, 2015. On this document the Tenant wrote: "I sent the following letter with my address as registered mail on this date".

When I asked the Tenant why she told me that she had sent it within 30 days, yet then claimed to have sent it seven months later, she said that she had "sent something else" within 30 days.

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

Y.K. testified that his father took over management of this rental unit in approximately 2003 when they moved into the home. He confirmed that the Tenant was already living in the rental unit. He also confirmed that the Tenant vacated the rental unit in October of 2014.

Y.K. testified that right after the Tenant moved out they received a document from her regarding her insurance. He stated that the next mail they received from the Tenant was the application for dispute resolution. He testified that the Tenant did not provide the Landlord with her forwarding address until they received her application for dispute resolution in November or December of 2015. He was not able to be more specific as to when that was received.

In reply, the Tenant confirmed that said she was afraid to return to the residence because on the day she was cleaning the rental unit the Landlord's daughter "freaked out at her" when she asked about her security deposit. She also stated that was the reason she didn't give her address to the Landlord until May 2015.

### 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, plus interest.

I accept the Tenant's testimony and evidence that she provided the Landlord with her forwarding address in May of 2015. Notably, the Landlord was not in attendance to dispute her claim. While Y.K. claimed no such letter was received, I prefer the Tenant's evidence over that of Y.K. as the recipient of this letter would have been his father.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

Further, although the Landlord took over management of the rental property after the tenancy had commenced, there was no evidence that he performed a condition inspection when he became the Landlord, nor was there any evidence to show that he performed one when the tenancy ended. There was also no evidence that the Landlord complied with the *Residential Tenancy Act* or *Regulations* in terms of scheduling a move out condition inspection. By failing to perform an outgoing condition inspection report the Landlord has extinguished his right to claim against the security deposit, pursuant to section 36(2) of the *Act*.

The Landlord submitted photos of the rental unit purportedly to show the condition of the rental unit. As noted during the hearing, the Landlord is not able to make a monetary

claim through the Tenant's Application; should the Landlord feel he is entitled to monetary compensation from the Tenant, he must make his own application.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to keep the security deposit, or make deductions to it, unless they have some authority under the *Residential Tenancy Act*, such as an Order from an Arbitrator or the written agreement of the Tenant. Here the Landlord did not have any such authority.

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.

The Tenant testified that she paid \$330.00 in October of 2001; the interest which is payable on this sum is \$14.27 for a total of \$344.27. Applying the doubling provisions, the Tenant is entitled to the sum of \$688.54. As the Tenant has been substantially successful I also award her recovery of the \$50.00 filing fee for a total Monetary Order in the amount of **\$738.54**. The Tenant is given a formal Order 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 is entitled to return of double the security deposit paid (plus interest) in addition to recovery of the \$50.00 filing fee for a total award of **\$738.50**.

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: April 18, 2016

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Residential Tenancy Branch

