



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for the return of the security deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

### Background and Evidence

The tenant testifies that this month to month tenancy started on April 01, 2013 and ended on September 30, 2015. Rent for this unit was \$1,050.00 per month and was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$525.00 on March 27, 2013. The landlord agreed with the details presented by the tenant.

The tenant testifies that the landlord did not complete a move out condition inspection report with the tenant at the end of the tenancy. The tenant testifies that she did not give the landlord permission to keep all or part of her security deposit and the landlord has

failed to return her security deposit within the allowable time frame. The tenant therefore seeks to amend her application to recover her security deposit plus the doubling provision as allowed under the *Residential Tenancy Act (Act)*. The tenant agreed that she sent the landlord her forwarding address by text message on September 25, 2015. The tenant confirmed that the address on her application is her forwarding address.

The landlord testified that he was not aware of the necessary steps he had to follow to keep all or part of the security deposit. The landlord testified that the tenant has some culpability regarding some damage to the rental unit caused during the tenancy and it has always been the landlord's intent to be fair to the tenant. Three offers to return some of the security deposit have been made to the tenant but the tenant declined these offers and the landlord has now filed his own application for a Monetary Order for damages in May, 2016. A hearing has been scheduled for the landlord's application for November 15, 2016.

### Analysis

The tenant has applied for the return of the security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the *Residential Tenancy Act (Act)* s. 38, prior to applying for arbitration. Text messaging is not considered to be a method in which to provide a forwarding address in writing. Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today **June 06, 2016**.

The landlord therefore has 15 days to return the tenant's security deposit. If the landlord fails to do so the tenant is entitled to file a new application to recover double the security deposit pursuant to s. 38 of the *Act*.

It is important to note here that as the landlord failed to conduct a move out condition inspection of the unit with the tenant at the end of the tenancy and complete a report in accordance with s. 35(1)(2)(3) and (4) of the *Act* which states:

**35** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit, or*

*(b) on another mutually agreed day.*

*(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

*(3) The landlord must complete a condition inspection report in accordance with the regulations.*

*(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

Consequently s. 36(2) of the *Act* states:

*(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

I therefore strongly suggest the landlord returns the tenant's security deposit prior to the 15 days now given for the security deposit to be returned.

As the tenant's application is considered to be premature, the tenant must bear the cost of filing her application.

### Conclusion

The tenant's application is dismissed with leave to reapply.

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: June 06, 2016

---

Residential Tenancy Branch