



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD (Tenant's Application)  
   MNSD, MND, MNR, MNDC, FF (Landlord's Application)

### Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution she sought return of double her security deposit paid. In the Landlords' Application, they sought a Monetary Order for unpaid rent, damage to the rental unit, compensation for loss, authority to retain the security deposit and recovery of the filing fee.

The hearing of the cross applications was scheduled for 1:00 p.m. on this date. The only participant who called into the hearing was the Tenant. As the Landlords failed to call into the hearing, and therefore failed to present their case, their Application, filed December 10, 2015, is dismissed without leave to reapply.

The Tenant confirmed that she served the Landlord, M.R., with her Application for Dispute Resolution and Notice of the Dispute Resolution hearing on November 18, 2015. She also confirmed that to her knowledge the Landlord, M.R., was served with the materials as she accepted the package.

The Tenant confirmed that she erroneously believed that the other Landlord, A.S., had the same last name as the Landlord, M.R., and as such she named him A.R. on her Application for Dispute Resolution and furthermore addressed the registered mail package to this incorrect name. She confirmed he did not retrieve the package.

Consequently, I find that the Landlord, M.R. was duly served with the Tenant's Application materials and Notice of Hearing and I proceeded with the hearing in her absence. This Decision and resulting Monetary Order are with respect to the Landlord, M.R., as I find A.S. was not given notice of these proceedings.

I was advised by the Tenant that both M.R. and A.S. signed the tenancy agreement. As that document was not introduced in evidence I am unable to confirm this information.

In the event both M.R. and A.S. are both named as Landlords on the tenancy agreement, they would likely be jointly and severally liable for any amounts awarded pursuant to this my Decision. .,

Issue to be Decided

Is the Tenant entitled to return of double her security deposit pursuant to section 38 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that the tenancy began on March 23, 2014. Monthly rent was payable in the amount of \$1,200.00 and the Tenant paid a \$600.00 security deposit.

The Tenant confirmed that the Landlords did not perform an incoming or outgoing condition inspection report. She also claimed the Landlords did not provide her with a copy of the residential tenancy agreement.

The Tenant further confirmed that her estranged husband, who is named on the Landlord's Application, as O.N., did not in fact reside in the rental unit nor did he sign the tenancy agreement.

The Tenant confirmed that she moved out of the rental unit on October 31, 2015. She also confirmed that she provided the Landlord with her forwarding address (which was her lawyer's address) in writing on that date when she returned the keys to the rental unit to the Landlord.

Notably, the Tenant's address as noted on the Landlords Application for Dispute Resolution is the address of the Tenant's lawyer, which was provided to him on October 31, 2015.

When the Landlord failed to return her security deposit, the Tenant applied for dispute resolution on November 18, 2015. The Landlord applied on December 10, 2015.

The Tenant seeks return of double her security deposit pursuant to section 38 of the *Residential Tenancy Act* in the amount of \$1,200.00.

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

**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.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
  - (a) the director has previously ordered the tenant to pay to the landlord, and
  - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
  - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
  - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (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.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants 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 security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord also extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled

to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38(6)(b) and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$1,200.00**, comprised of double the security deposit (2 x \$600.00).

The Tenant is given a formal Monetary Order in the amount of \$1,200.00 and must serve the Order on the Landlord. 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 Landlord breached section 38 of the *Act* as she failed to apply for dispute resolution within 15 days of receiving the Tenant's forwarding address in writing. The Landlord also failed to complete incoming and outgoing condition inspection reports as required by the *Residential Tenancy Act* and the *Regulations*.

Pursuant to section 38(6)(b), the Landlord must repay the Tenant double the security deposit paid (\$600.00) in the amount of **\$1,200.00**; the Tenant is given a Monetary Order in this amount.

This decision is final and binding on the parties, except as 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: June 14, 2016

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Residential Tenancy Branch