



# 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 dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her witness

The tenant testified and provided documentary evidence to confirm the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on June 23, 2016 in accordance with Section 89 and that the landlord received the registered mail package on June 24, 2016. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the testimony and documentary evidence of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

I note the tenant indicated that she had previously had a hearing set for February 2016 at which time she did not attend and her Application was dismissed with leave to reapply.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation agreed to by the landlord; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant testified the tenancy began sometime in approximately 2005 and at the end of the tenancy she was paying \$500.00 per month. She also stated that she paid a security deposit of \$350.00 that has not yet been returned to her. She stated and

provided documentary evidence to confirm she vacated the rental unit on January 3, 2015.

The tenant submitted into evidence a "Notice to End Tenancy" letter dated October 31, 2014 signed by the landlord confirming that the landlord will give the tenant \$1,500.00 if she vacates the rental unit by January 15, 2015. The agreement states that the landlord will only give her the full security deposit back if she takes all of her belongings and cleans up the unit before she leaves.

The tenant also provided documentary evidence that she had provided the landlord with her forwarding address by email on February 23, 2015.

### Analysis

Based on the tenant's undisputed testimony and documentary evidence I am satisfied the tenant and landlord reached a mutual agreement to end the tenancy. I find that the terms of that agreement included the landlord paying the tenant \$1,500.00 if she vacated the rental unit by January 15, 2015.

I find the tenant has established that she vacated the rental unit earlier than the required January 15, 2015 date. As such, I find the tenant is entitled to the landlord's compensation of \$1,500.00.

Despite the agreement of the parties Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As such, I find the landlord had no authority to unilaterally keep the tenant's security deposit and must have either returned it or filed a claim against it within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

Based on the tenant's undisputed evidence and testimony I find the landlord had until March 10, 2015 to either return the deposit or file a claim against it. As there is no evidence before me that the landlord did either, I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amount of security deposit plus interest on the original amount of the deposit, pursuant to Section 38(6).

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,312.40** comprised of \$1,500.00 compensation owed; \$700.00 double the amount of the security deposit; \$12.40 interest on the original

amount of the security deposit and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 18, 2016

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Residential Tenancy Branch