



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This hearing is an application by the Tenant for a Monetary Order for return of double the security deposit, the interest and the filing fee for the claim.

Only the Tenant called into the hearing. The Tenant testified that she served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April 13, 2016. The Tenant provided a Canada post tracking number as evidence of service (which is reproduced on the cover page of this my decision).

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the Landlord has been duly served in accordance with the *Act* and I proceeded with the hearing in her absence.

I have reviewed all evidence which complies with the *Residential Tenancy Branch Rules of Procedure*. I refer only to the relevant facts and issues in this decision.

### 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 she paid a security deposit of \$300.00 on September 28, 2015. A copy of receipt for payment of the security deposit, which was signed by the Landlord, was provided in evidence.

The Tenant testified that she vacated the premises on February 29, 2016 . The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to by text message sent on March 1, 2016. This text message was provided in evidence by the Tenant as well as the Landlord's response wherein she claims to have sent the security deposit cheque on the "15<sup>th</sup>". While text messages are not generally considered sufficient for the purposes of section 38(1)(b), I find this to be sufficient as the Landlord confirmed receipt of the address by her response.

The Tenant testified that she did not receive the cheque allegedly sent by the Landlord on the "15<sup>th</sup>". She also testified that to her knowledge the Landlord did not apply for dispute resolution.

### Analysis

Security deposits are governed by section 38 of the *Residential Tenancy Act* which 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 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 Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

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, plus interest.

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.

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.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$700.00**, comprised of double the security deposit (\$300.00 x 2 = \$600.00) and the \$100.00 fee for filing this Application.

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 her security deposit pursuant to section 38(6) of the *Residential Tenancy Act* in addition to recovery of the \$100.00 filing fee for a total Monetary Order in her favour in the amount of **\$700.00**.

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: September 14, 2016

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Residential Tenancy Branch