



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This 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.

Both parties appeared at the hearing gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form 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 *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 the filing fee paid?

### Background and Evidence

The Tenant testified that the tenancy began February 15, 2014. Monthly rent was initially payable in the amount of \$880.00.

The Tenant paid a security deposit of \$440.00 on January 22, 2014. The Tenant testified that she vacated the premises on January 1, 2016. The Tenant also stated that

she provided the Landlord with a written notice of the forwarding address to return the security deposit to on the date that she dropped off the key for the rental unit.

The Tenant testified that she did not sign over a portion of the security deposit. The Tenant received \$360.00 from the Landlord by cheque dated January 27, 2016. A copy of the cheque was provided in evidence. The Tenant confirmed that she did not consent to the Landlord retaining any amount of the security deposit.

The Tenant also stated that the Landlord did not perform an incoming or outgoing condition inspection reports.

Approximately fifteen minutes into the hearing the Landlord was to begin his evidence. The reception on his telephone was problematic and he disconnected and then called back into the hearing. During his absence I did not receive any further evidence from the Tenant as we awaited his return.

The Landlord testified that he performed a move in condition inspection report, but did not complete a move out condition inspection.

The Landlord further confirmed the evidence of the Tenant as to the date the tenancy began, the payment of the security deposit, and receipt of her forwarding address in writing. The Landlord confirmed that he did not apply for dispute resolution within fifteen days of receipt of the Tenant's forwarding address in writing.

### 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 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.

The Landlord confirmed that he did not apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant.

In failing to apply for dispute resolution within 15 days of the end of the Tenant the Landlord has breached section 38(1) of the *Act*.

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 and 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.

Pursuant to *Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* paragraph 5, and sections 38 and 67 of the *Residential Tenancy Act*, I must Order, that the Landlord pay the Tenant the sum of **\$620.00** calculated as follows:

\$440.00: original security deposit paid:

x 2 (pursuant to section 38(6))

= \$880.00

- \$360.00 (paid to Tenant)

= \$520.00

+ \$100.00 filing fee

**= \$620.00**

The Tenant is given a formal Monetary 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 Landlord failed to apply for authority to retain the security deposit within 15 days as required by section 38(1) of the *Act*. Pursuant to section 38(6) and the *Policy Guidelines* the Tenant is entitled to double the security deposit paid (\$440.00 x 2 = \$880.00). As

the Landlord has paid her \$360.00 she is entitled to the balance of \$520.00 in addition to recovery of the filing fee of \$100.00 for a total Monetary Order in the amount of **\$620.00.**

This Decision and Monetary Order are 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 26, 2016

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Residential Tenancy Branch