



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MT, CNR, O, OLC, SS, MNSD, MNDC, FF

### **Introduction**

This Hearing dealt with an Application by the Tenant for an extension of time to make an application to cancel a notice to end tenancy; to cancel a notice to end tenancy; “other orders”; an order that the Landlord comply with the Act, regulation or tenancy agreement; an order that the Tenant may serve the Landlord in a different way than described in the Act; a monetary order for return of double the security deposit paid to the Landlord; compensation for the cost of moving; and for the return of the filing fee for the Application.

Both parties signed into the hearing and provided affirmed testimony and were provided with the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Landlord was served with the Tenant’s Notice of Hearing documents by express post. The parties confirmed that they were each served with the other’s documentary evidence. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, **I refer to only the relevant facts and issues in this decision.**

The Landlord provided documentary evidence suggesting that she believes she has a monetary claim against the Tenant; however, the Landlord has not made her own Application for Dispute Resolution. I explained to the parties that the Landlord remains at liberty to make her own Application, should she so desire.

### **Issue(s) to be Decided**

At the outset of the Hearing, it was determined that the Tenant moved out of the rental unit on or about August 22 or 23, 2016. The Tenant stated that he was not seeking the

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cost of serving the Landlord; costs of printing receipts; recovery of past rent payments; or the cost of the security deposit and first month's rent at his new home. Therefore, the only outstanding matters to be decided are the Tenant's request for return of double the security deposit paid to the Landlord; compensation for the cost of moving; and for the return of the filing fee for the Application.

### **Background and Evidence**

The Tenant paid the Landlord a security deposit of \$850.00 on or about "late January, 2016".

The Landlord acknowledged that the Tenant provided her with written notice of his forwarding address on or about August 26, 2016. The Tenant did not sign over a portion of the security deposit. The Landlord has not returned the security deposit.

The Tenant testified that the Landlord did not perform an incoming condition inspection report.

The Landlord claimed the Tenant had left the rental unit unclean and damaged. She stated that she was also expecting a "per diem" for unpaid rent.

### **Analysis**

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to the Act, the Landlord is required to handle the security deposit as follows:

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.

...

(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.

[Reproduced as written.]

I note that the Landlord extinguished the right to claim against the security deposit or pet damage deposit by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

**24** (2) The right of a 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 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

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

[Reproduced as written.]

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of Sections 38 and 24 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.

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

business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. There was 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.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Landlord submitted evidence about the condition of the rental unit after the Tenant left; however, the Landlord is unable to make a monetary claim through the Tenants' Application. The Landlord has to file their own Application to keep the deposit within the 15 days of certain events, as explained above.

The Landlord may still file an application for alleged unpaid rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this Hearing.

The Tenant's application for recovery of the cost of moving is dismissed. There is no provision in the Act for such a claim.

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 **\$1,800.00**, comprised of double the security deposit (2 x \$850.00) and the \$100.00 fee for filing this Application.

### **Conclusion**

The Tenants are 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.

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: October 17, 2016

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