



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

Dispute Codes MNSD

### Introduction

This hearing convened as a result of an application by a Tenant for a Monetary Order for return of double the security deposit.

Only the Tenant appeared at the hearing. She testified that she personally served the Landlord and his spouse with Notice of the Hearing and her Application for Dispute Resolution on May 27, 2016. Based on her testimony, I find that the Landlord has been duly served in accordance with the *Act* and I proceeded in his absence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the Tenant entitled to a Monetary Order for return of double the security deposit?

### Background and Evidence

The Tenant testified that the one month fixed term tenancy began September 1, 2014. She stated that she was in receipt of income assistance at the time, and the Ministry of Social Development and Social Innovation paid her security deposit of \$400.00. She testified that this was a loan which she paid off in \$50.00 increments such that the amount is owing to her.

The Tenant vacated the premises on October 1, 2014. She testified that she provided the Landlord with a written notice of the forwarding address to return the security deposit to shortly after she moved out. When she did not have a response from the

Landlord she sent a further letter dated August 27, 2015 (a copy of which was introduced in evidence) again providing her forwarding address. In this second letter the Tenant writes that it is her second request for her full damage deposit.

The Tenant testified that she did not sign over a portion of the security deposit. She also stated that the Landlord did not perform neither incoming nor outgoing condition inspection reports.

### 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 as follows.

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.

By failing to perform incoming or outgoing condition inspection reports the Landlord has also extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant 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.

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. Accordingly, the Tenant is entitled to return of double her security deposit (\$400.00 x 2) in the amount of \$800.00.

### Conclusion

I Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of \$800.00. The Tenant is given a Monetary Order in this amount. The Tenant must serve the Order on the Landlord and 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 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: November 21, 2016

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Residential Tenancy Branch