



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION ON REVIEW HEARING**

Dispute Codes: MNSD RR MNDC FF

### **Introduction**

This hearing was originally scheduled for August 15, 2016 but there was a telephone problem and the tenant was unable to continue in the conference. The application was dismissed. A Review Consideration Decision dated October 12, 2016 was granted her request and the date was set for this Review Hearing today.

Both parties attended the hearing today and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and personally with her forwarding address on December 15, 2015. The landlord agreed she had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return the security deposit pursuant to Section 38;
- b) An Order for a refund of rent; and
- c) To recover the filing fee for this application.

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

Has the tenant proved on the balance of probabilities that she is entitled to the return of the security deposit according to section 38 of the Act and to a refund of one month's rent?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the tenant made enquiry about the rental unit on December 13, 2015. She arrived and saw it and accepted it. She paid a security deposit of \$600 plus \$1180 for January 2016 rent that same evening.

On December 15, 2015 the tenant decided she no longer wanted the rental unit. The landlord said that she had meanwhile rejected other applicants relying on this tenant's

agreement to rent the unit. The tenant requests a refund of January rent plus her security deposit. The tenant agreed that the landlord had tendered her deposit on December 15, 2015 but she refused it as she considered she was also entitled to the return of the rent she had paid.

In evidence are many translated emails between the parties, receipts, the Decision on August 15, 2016 noting the telephone problem and the Review Application.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

According to the Act section 1, a tenancy may be oral, implied or written. I find the parties had an oral tenancy supported by their emails and the payment of the security deposit and one month's rent for January 1, 2016. I find the landlord relied on this tenancy agreement and turned away other applicants. The *Residential Tenancy Act* states in sections 44 and 45 that a tenancy may end only in certain ways. Section 45 provides a tenant must give one full month's notice to end the tenancy. I find the tenant's notice on December 15, 2015 was not effective until January 31, 2016. Therefore I find she is not entitled to a refund of rent for January 2016.

In respect to the return of her security deposit, the Act provides:

*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.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not

make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

In this case, I find the landlord tendered the security deposit to the tenant in compliance with section 38 but the tenant refused to accept it as she wanted a refund of January's rent also. I find she is still entitled to the refund of her security deposit but not to the doubling of it as the landlord did not violate the provisions in section 38 of the Act.

**Conclusion:**

The Decision dated August 15, 2016 is no longer in effect. The application for a refund of January 2016 rent is dismissed. I find the tenant entitled to a monetary order for \$600 for the return of her security deposit. I find she is not entitled to recover her filing fee for her application for the refund of rent is dismissed and the return of her security deposit was offered to her and she refused. Therefore, this application was unnecessary and without merit.

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: December 01, 2016

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Residential Tenancy Branch