



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”) and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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 rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and procedural matter

It should be noted that the landlord was acting inappropriate, argumentative and was disturbing the hearing. As a result, the landlord’s telephone line was placed on mute for the remainder of the hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of the Deposit?

### Background and Evidence

The tenancy began on April 1, 2015. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The tenant testified that they vacated the premises on February 29, 2016. The tenant stated that they provided the landlord with a written notice of the forwarding address in January 2016, when they gave notice to end the tenancy.

The landlord testified that they had the tenants forwarding address in January 2016. The landlord stated that they did not return the deposit or make an application for dispute resolution.

The landlord testified that they did not know the requirements of the Act. The landlord stated that they have a memory problem and they can get a medical note and that should be sufficient.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(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 this case, the landlord did not return the Deposit or applied for arbitration, within 15 days of the end of the tenancy, which was February 29, 2016.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

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. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Further, even if the landlord produced a doctor's note, which they did not, that they have a memory problem, I find a doctor's note does not override the landlord's obligation under the Act. The landlord is in the business of renting and it is the landlord's responsibility to know the Residential Tenancy Act or appoint some to act on their behalf.

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.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **\$1,100.00**, comprised of double the Deposit (\$500.00) and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, 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. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenant's' application for return of the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: January 17, 2017

---

Residential Tenancy Branch