



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit. The landlord did not appear at the hearing. The tenant testified that she sent the hearing documents to the landlord via registered mail on August 12, 2016 and the package was successfully delivered on August 22, 2016. The tenant provided the registered mail tracking number as proof of service. I was satisfied the tenant duly served the landlord with notification of this proceeding and I continued to hear from the tenant without the landlord present.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

### Background and Evidence

The tenancy for the rental unit started on or about January 2015 on a month to month basis. The tenant had paid a \$300.00 security deposit for a different rental unit she had rented from the landlord and it was transferred to the tenancy for the subject rental unit. The tenancy for the subject rental unit ended on June 30, 2016.

The tenant submitted that she had emailed her forwarding address to the landlord on July 2, 2016 and then sent a letter with her forwarding address to the landlord on July 18, 2016. The landlord responded by way of an email on July 20, 2016 indicating the landlord was making a deduction for hydro and would be sending a cheque for the net amount that day. On July 25, 2016 the tenant received a cheque from the landlord at her forwarding address. The cheque was for \$141.38 and dated July 15, 2016. The tenant testified that she did not cash the cheque.

The tenant was not agreeable to the landlord making a deduction for hydro and sent another letter to the landlord on July 26, 2016. In the letter, the tenant pointed out that

the tenant had not given written authorization for the deduction, that she did not agree that she owed the landlord for hydro costs, links to the Residential Tenancy Branch website, and a request that the landlord the return of the full amount of the deposit to the tenant's forwarding address which she provided again.

The tenant testified that the landlord did not sent the balance of the security deposit to the tenant or make a claim against the security deposit by filing an Application for Dispute Resolution.

The tenant provide the following documentary and photographic evidence: the tenant's letter to the landlord dated July 18, 2016; a photograph of the envelope with a post-mark showing the letter was taken to the post office on July 18, 2016; the landlord's emailed response of July 20, 2016; a copy of the partial refund cheque of \$141.38, a hydro bill dated March 16, 2016 and the envelope these items came in; and, the tenant's letter to the landlord dated July 26, 2016.

### Analysis

Unless a landlord has a legal right to retain all or part of the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

A landlord obtains a legal right to make deductions from a security deposit by gaining the tenant's written authorization to make the deduction or obtains the authorization from an Arbitrator by filing a Landlord's Application for Dispute Resolution; or, where the tenant extinguished the right to return of the security deposit by failing to participate in the move-in or move-out inspection despite two requests by the landlord.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the security deposit. Further, the tenant did not give the landlord written authorization to make a deduction from the security deposit and the landlord did not file an Application for Dispute Resolution seeking authorization from an Arbitrator to make a deduction. Therefore, I find the landlord did not have a legal right to make a deduction from the tenant's security deposit and was required to comply with section 38(1) by either refunding the entire security deposit to the tenant or filing an Application for Dispute Resolution within 15 days of receiving the tenant's forwarding address.

Based upon the evidence before me, I am satisfied the landlord was in receipt to the tenant's forwarding address in writing by way of the letter mailed to the landlord on July 18, 2016. Since the landlord did not make file an Application for Dispute Resolution, gain the tenant's written consent, or refund the security deposit in its full amount I find the landlord violated section 38(1) and must now pay the tenant double the security deposit, in the amount of \$600.00, pursuant to section 38(6) of the Act.

Since the tenant was successful in this application, I further award the tenant recovery of the \$100.00 filing fee she paid.

In light of all of the above, the tenant is provided a Monetary Order in the total amount of \$700.00 to serve and enforce upon the landlord.

#### Conclusion

The tenant has been provided a Monetary Order in the amount of \$700.00 to serve and enforce upon the landlord.

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: February 09, 2017

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Residential Tenancy Branch