



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on September 14, 2016 for the return of double her security deposit, and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the regulation or tenancy agreement.

The Tenant appeared for the hearing with a legal advocate and a support worker. The Landlord also appeared for the hearing. The Tenant, the Tenant's support worker, and the Landlord provided affirmed testimony and the Tenant's legal advocate made submissions on behalf of the Tenant.

No issues were raised by the parties with respect to the service of the Application and the service of each other's documentary evidence prior to this hearing. The hearing process was explained and no questions were asked of the proceedings. The parties were given a full opportunity to provide oral evidence, make submissions, and cross examine the other party on the issues to be decided.

### Preliminary Matter

During the hearing, after the parties had provided evidence on the Tenant's claim for double the security deposit, both parties agreed that the Tenant would withdraw her monetary claim for one month's compensation she had claim and be provided with leave to re-apply for this portion only.

This was because the Landlord indicated that she was in the process of making a claim for losses she had incurred as a result of this tenancy which she had laid out in her rebuttal evidence. However, the Landlord was informed that her claim could not be dealt with in this hearing as she had not made a formal Application requesting this amount. The parties agreed that the Landlord's monetary claim as laid out by her was inextricably linked to the Tenant's monetary claim for one month's rent and that if I were

to make findings on this matter in this hearing, this would potentially hinder both parties positions after the Landlord files for her monetary claim.

The parties also committed to resolving their outstanding monetary claims outside of the dispute resolution process as a mutual agreement may be a better outcome for the parties than one enforced on them by a decision based on evidence provided.

The parties also agreed that they had not served and submitted all of the evidence they were intending to rely on, such as a bank records or evidence showing the amount of rent payable in this tenancy, for this portion of the Tenant's claim.

Accordingly, with the consent of both parties, I dismissed the Tenant's monetary claim for the return of one month's rent. The Landlord is at liberty to file her application for monetary losses and the Tenant may re-apply for her portion of the claim not heard in this hearing so that the matters can be heard and decided upon together. As a result, I continued to deal with the Tenant's Application for the return of her security deposit as follows.

#### Issue(s) to be Decided

Is the Tenant entitled to the return of double her security deposit?

#### Background and Evidence

The parties agreed that this oral tenancy for a basement suite in a residential home started on May 31, 2009 on a month to month basis. Rent started off at \$650.00 payable on the first day of each month. However, the parties were at dispute as to the amount of rent that was payable prior to the tenancy ending. The parties confirmed that the tenancy terminated at the end of April 2016, although the parties were in dispute as to the manner in which it ended.

The Tenant's legal advocate pointed to a letter written and sent to the Landlord by the legal advocate. This letter, which was provided into evidence, was dated July 25, 2016 and contained the Tenants' forwarding address for the return of the Tenant's security deposit. The Tenant's legal advocate explained that this letter was mailed to the Landlord by express post.

The Tenant's legal advocate then pointed to a letter which was sent to her by the Landlord in response to her letter. The letter sent by the Landlord was dated July 29,

2016 and was provided into evidence. In that letter, the Landlord acknowledges receipt of the legal advocate's letter dated July 25, 2016 by express post.

The Landlord explained that she was unable to confirm receipt of the Tenant's forwarding address but when she was pointed to her written response to the July 25, 2016 letter sent by the legal advocate, the Landlord then acknowledged receipt of it and admitted that this evidence could not be disputed. The Landlord confirmed that she still retained the Tenant's security deposit of \$300.00.

The Tenant confirmed that she had not given any written consent to the Landlord to keep her security deposit and was now applying to recover double the amount back of \$600.00.

### Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make a formal application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

A landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. A 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. If a landlord and a tenant are unable to agree to the repayment of the security deposit or to deductions to be made from it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that a landlord feels they are entitled to keep the security deposit based on unproven claims. A landlord may only keep the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant.

I accept the undisputed evidence before me that the Landlord received the Tenant's forwarding address in writing on July 29, 2017 after the tenancy ended as supported by the Landlord's reply which acknowledges the Tenant's letter dated July 25, 2016. Therefore, the Landlord would have had 15 days from July 29, 2017 onwards to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord filed an application within 15 days of the ending of the tenancy or obtained written consent from the Tenant to keep her security deposit. Therefore, I find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Based on the foregoing, I find the Tenant is now entitled to double the return of her security deposit in the amount of \$600.00.

The Tenant is issued with a Monetary Order for this amount which must be served on the Landlord. The Tenant may then enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. The Landlord may also be liable for any enforcement costs incurred by the Tenant if voluntary payment is not made. Copies of this order are attached to the Tenant's copy of this Decision.

### Conclusion

The Landlord breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Landlord is ordered to pay the Tenant double the amount of \$600.00. The Tenant's claim for one month's rent was withdrawn with leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 14, 2017

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Residential Tenancy Branch