



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLINE APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The landlord's agent PB ("landlord"), the tenant, and the tenant's agent CAG attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the building manager for the rental property and that she had authority to speak on behalf of the landlord company named in this application as an agent at this hearing. The tenant confirmed that his agent, who is his wife, had authority to represent him at this hearing.

This hearing lasted approximately 48 minutes in order to allow both parties to fully present their submissions and due to repeated interruptions and questions from the tenant. The tenant called into the hearing approximately 4 minutes late, at 2:04 p.m. when the conference began at 2:00 p.m. between myself and the landlord, and I advised the tenant what occurred during his absence.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The landlord testified that she received the tenant's application late on April 3, 2017, shortly before this hearing on April 27, 2017. She said that she did not receive it within three days of the tenant filing the application on October 21, 2016. The tenant said that an information officer at the Residential Tenancy Branch ("RTB") informed him that he had to serve his application to the tenant three days before the hearing date. He said that he served it earlier than the three days because he wanted the landlord to have enough time to respond. The landlord said that she reviewed the tenant's application, had a chance to respond by submitting written evidence for this hearing, and she was ready to proceed with the hearing, despite the tenant's delay in

serving the landlord. Accordingly, although the tenant's application was served late since it was not served within three days of the tenant filing the application, contrary to section 59(3) of the *Act*, I proceeded with the hearing on the basis of the landlord's consent and the fact that she reviewed the application and had a chance to respond to it.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the landlord company's legal name, which both parties consented to during the hearing. I also amend the tenant's application to reduce his monetary claim from \$700.00 to \$680.00, as the tenant said that he thought he originally paid a security deposit of \$350.00 but he agreed with the landlord's number of \$340.00 and so he was only seeking double this amount which is \$680.00. I find no prejudice to the landlord in amending the tenant's claim to reduce the monetary value, rather than increasing it.

#### Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

##### *Interruptions and inappropriate behaviour at the dispute resolution hearing*

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

At the outset of the hearing, I advised both parties to respect each other and myself, that one person was to speak at any given time, and that parties were not to interrupt while others were talking. Throughout the hearing, the tenant repeatedly interrupted the landlord and me, he laughed at the comments that I made, and he became upset when I asked him questions. The tenant displayed rude, disrespectful and inappropriate behaviour. I repeatedly warned the tenant to stop his inappropriate behaviour but he continued. The tenant's agent said that the tenant was behaving this way because he was an "old man." I notified the tenant that he could be excluded from the hearing if he continued with his behaviour. However, I allowed the tenant to attend the full hearing, despite his inappropriate behaviour, in order to provide him with an opportunity to present his application.

I caution the tenant not to engage in the same rude and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that case, a decision will be made in the absence of the tenant.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2006 and ended on August 11, 2016. Monthly rent in the amount of \$776.00 was payable on the first day of each month. A security deposit of \$340.00 was paid by the tenant on May 13, 2006 and the landlord continues to retain this deposit in full. The landlord said that she thought the deposit had been returned to the tenant, but both parties confirmed that it had not. A written tenancy agreement was signed by both parties and only page one of the agreement was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on July 29, 2016, by way of a letter of the same date. The landlord acknowledged receipt of this letter and provided a copy in her written evidence package. The landlord did not have written permission to keep any amount from the security deposit. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

The tenant seeks a return of double the amount of his security deposit, totalling \$680.00, because the landlord failed to return it or make an application to keep it.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the undisputed evidence of both parties. The tenancy ended on August 11, 2016. The tenant provided a written forwarding address to the landlord in his letter, dated July 29, 2016, on the same date and the landlord acknowledged receipt of this forwarding address. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full

deposit to the tenant or file an application to claim against it within 15 days of the tenancy ending on August 11, 2016. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double the value of his security deposit of \$340.00, totalling \$680.00, from the landlord.

According to the deposit interest calculator on the RTB website, interest of \$11.41 is payable on the landlord's retention of the tenant's original security deposit of \$340.00 from the date it was received on May 13, 2006 until the date of this decision on April 27, 2017. As per Residential Tenancy Policy Guideline 17, interest is calculated on the original security deposit amount only and is not doubled.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$691.41 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: April 27, 2017

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Residential Tenancy Branch