



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution. The landlord confirmed receipt of the tenant's application. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application package.

### Issue(s) to be Decided

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

### Background and Evidence

The parties agreed on the following facts. This tenancy started in January, 2016 and ended on January 31, 2017. The monthly rent was \$1,650.00. The tenant provided a security deposit of \$825.00 at the start of the tenancy and is still held by the landlord.

The parties confirmed that no condition inspection report was prepared at either the start or end of the tenancy. The landlord's agent inspected the rental unit after the tenant had vacated the premises. The landlord testified that he had concerns about the condition of the rental unit after the tenant had moved out. The landlord said that the front door of the rental unit needed to be replaced at a cost of \$357.98. There were other deficiencies that cost the landlord \$300.00. The parties testified that the tenant did not provide written authorization that the landlord may keep any portion of the security deposit. The parties testified that the tenant provided the landlord with a forwarding address sometime in February, 2017. The landlord said that he

issued a cheque in the amount of \$167.02, the equivalent of the security deposit of \$825.00 less the deduction of \$657.98 which the landlord said were required to fix the rental unit.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenant provided written notice of the forwarding address during the month of February, 2017. The landlord issued a cheque in the amount of \$167.02 to the tenant, but did not make an application for authorization to deduct from the full security deposit nor did he have written authorization from the tenant that he may make a deduction.

If the landlord had concerns arising from the condition of the rental unit at the end of the tenancy the landlord must address those matters within 15 days of receiving the tenant's forwarding address. Even if there was a legitimate complaint, the landlord must receive written authorization from the tenant pursuant to the *Act* to retain the security deposit.

In addition, the parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit within the 15 day time limit and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with

section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,650.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the landlord has provided a cheque to the tenant in the amount of \$167.02 already, I issue a Monetary Order in the amount of \$1,482.98 the balance of double the amount of security deposit for this tenancy.

#### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,482.98.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and 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: May 16, 2017

---

Residential Tenancy Branch