



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought return of double the security deposit paid.

The hearing occurred by teleconference on May 25, 2017. The Tenant appeared, as did the Chairperson of the Association who owns the rental building and a translator. The translator explained that the named Landlord, S.S., was a former agent of the Landlord, who is the Association.

Section 1 of the *Residential Tenancy Act* defines landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenant's Application to name the Association as well as S.S. as the Landlords. For the purposes of this hearing I will refer to the Chairperson as the Landlord's Agent.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?

### Background and Evidence

The Landlord's Agent confirmed that the Association continues to hold the Tenant's \$500.00 security deposit. They stated that the former agent, S.S., did not handle the transition well and did not inform them of the Order requiring her to return the security deposit by December 2, 2016.

In any case the Landlord's Agent confirmed they did not return the funds as the Tenant failed to pay the outstanding hydro bill.

On November 18, 2016 Arbitrator Senay dismissed the Tenant's Application for return of his deposit finding that he made his application prematurely; the relevant portions of her decision are as follows:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

In these circumstances the Landlord did not receive the Tenant's forwarding address in writing until the Landlord was served with the Tenant's Application for Dispute Resolution. I therefore find that the Tenant filed his application for the return of the security deposit prematurely, as he had not yet served the Landlord with a forwarding address.

I find that the service of the Application for Dispute Resolution served the Landlord with notice that there would be a hearing regarding the security deposit but it did not constitute service of a forwarding address for the purposes of section 38(1) of the *Act*. I find that it entirely possible that the Landlord believed it was too late to file a claim against the security deposit at that point or the she should wait until the dispute resolution proceeding was completed before returning the Tenant's security deposit.

As the Tenant applied for the return of his security deposit prematurely, I dismiss his application for the return of the deposit.

As discussed with the parties at the hearing I find that, for the purposes of section 38(1) of the *Act*, the Landlord received a forwarding address for the Tenant, in writing, on November 17, 2016. In the event the Landlord fails to return the Tenant's security or to file an Application for Dispute Resolution by December 02, 2016, the Tenant retains the right to file another Application for Dispute Resolution claiming for the return of double that deposit, pursuant to section 38(6) of the *Act*.

The parties agreed that S.S. failed to return the Tenant's security deposit and failed to make an application for dispute resolution.

### Analysis

The Tenant sought return of double his security deposit pursuant to section 38(6) of the *Act*. For greater clarity I reproduce that section as follows:

#### **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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

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

I accept the Tenant's evidence that he did not agree to the Landlords retaining any portion of their security deposit.

Pursuant to Arbitrator Senay's Decision, the Landlords were required to return the Tenant's security deposit or apply for arbitration by December 2, 2016. The Landlords failed to do so.

The Landlords' Agent confirmed that he did not return the security deposit because the Tenant failed to pay the utility account.

The security deposit is held in trust for the Tenants by the Landlord. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

The Landlords failed to comply with the *Act*, and the Order of Arbitrator Senay. Accordingly, the Tenant's request for return of double his security deposit is granted.

Conclusion

I Order, pursuant to section 38 and 67 of the *Act*, that the Landlords pay the Tenant the sum of **\$1,000.00**, comprised of double the security deposit (2 x \$500.00).

The Tenant is given a formal Monetary Order in the amount of **\$1,000.00** and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords 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.

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 25, 2017

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Residential Tenancy Branch