



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TLA ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC 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 of the *Act*; and
- a Monetary Order for money owed pursuant to section 67 of the *Act*.

Both the landlords and the tenants appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented at the hearing by his advocate, D.D., (the "tenant").

The landlord acknowledged receipt of the tenant's application for dispute resolution and evidentiary package. I find that the landlord was duly served in accordance with the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Is the tenant entitled to a monetary award?

### Background and Evidence

Testimony was provided by the tenant that this tenancy began on September 1, 2016. Rent was \$450.00 per month and a security deposit of \$225.00 collected at the outset of the tenancy continues to be held by the landlord.

The tenant explained that \$375.00 of his rent was paid by the Ministry of Social Development, while \$75.00 of rent was paid in cash by him. It was established by both parties that the tenant paid rent in full for September 2016. Midway through September 2016 he said that he experienced a very severe mental health issue and as a result he went to stay with some friends for support. On October 1, 2016 \$375.00 of rent was paid to the landlord by the Ministry of Social Development. The tenant stated that he returned to his apartment on the second week of October 2016 and found another person now living in his suite. The tenant continued by noting that he attempted to contact the landlord upon his return to the apartment but he was unsuccessful in speaking with her. Furthermore, the tenant said that remainder of the additional rent of \$75.00 was refused by the landlord.

During the course of the hearing the landlord described how she had not received rent in full for October 2016, had been unable to find the tenant through his social worker and had therefore deemed the suite abandoned. She explained that she did not know where the tenant was, or what had happened to him and had decided to re-rent the apartment. The landlord also claimed that no tenancy agreement was in place between the parties.

The tenant has applied for a Monetary Order of \$825.00. This figure represents a return of rent for October 2016 (\$375.00) and a return of his security deposit along with the associated penalty provided by section 36(8) of the *Act*. The tenant stated that no condition inspection report was conducted at the start or following the “conclusion” of the tenancy, and that he provided his forwarding address to the landlord in writing on December 7, 2016.

### Analysis

Section 38 of the *Act* requires the landlord to either return a 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 and, or upon receipt of the tenant's 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 as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on December 7, 2016, or following the "conclusion" of the tenancy. If the landlord had concerns about the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if the landlord suspected that the tenant had abandoned the rental unit and rent remained outstanding. A landlord cannot decide to simply keep the security deposit as recourse for loss.

While the landlord acknowledged that she kept the \$225.00 security deposit because of her determination that the tenant had abandoned the rental unit, no evidence was produced at the hearing that the landlord received 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 as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$450.00, representing a doubling of the tenant's security deposit that has not been returned.

The tenant has also applied for a return of October 2016 rent. As part of his evidentiary package, the tenant produced a receipt demonstrating that \$375.00 was paid to the landlord for October 2016 rent. The landlord explained that she suspected the tenant had abandoned the rental unit and had therefore re-rented the apartment. Furthermore, the landlord maintained that no tenancy agreement was signed by the parties.

I find no basis for which the landlord can retain rent for October 2016. While rent may not have been paid in its entirety for October 2016 the landlord took no steps under the *Act* to apply for an Order of Possession or Monetary Order. The landlord arbitrarily assumed that the tenant had abandoned the rental unit and accepted rent for October 2016 without question. As the landlord prevented the tenant from accessing a unit without an Order from the *Residential Tenancy Branch*, I find that the tenant has a right to recover the rent paid to the landlord for October 2016 rent. Little evidence was provided by the landlord that rent no tenancy agreement existed between the parties. A copy of the receipts of rent paid to the landlord indicates that the landlord is named as the party receiving the funds.

#### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$825.00 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.

<b>Item</b>	<b><u>Amount</u></b>
Return of Security Deposit (2 x \$225.00)	\$450.00
Return of October 2016 rent	375.00
<b>Total =</b>	<b>\$825.00</b>

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: July 7, 2017

---

Residential Tenancy Branch