



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

This hearing was convened in response to an application for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Applicant and Respondent were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Respondent argues that there was not a tenancy under the tenancy act as the Respondent is a tenant who rents the entire house from a landlord. The Respondent agrees that the Applicant was provided with a separate suite in the house, that the suite had its own entrance, that the Respondent did not share the separate suite with the Application, that the connections between the area of the house lived in by the Respondent and the suite lived in by the Application were secured with no access between them and that the Respondent collected a security deposit and monthly amounts for the occupancy of the suite.

Section 1 of the Act defines landlord as including, inter alia, a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit. Based on the Respondent’s own evidence that the suite was not shared with the Applicant and that the suite was separate and secured from the living area of the Respondent, I find that the

Respondent did not occupy the suite as a tenant. For this reason and given the additional evidence of the Respondent's right to possess the suite, the collection of a security deposit for the suite and the regular collection of monies for the occupation of the suite, I find that the Respondent is a Landlord within the meaning of the Act and that the Act therefore applies to the dispute.

Issue(s) to be Decided

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed and relevant facts: The Parties entered into a written tenancy agreement with tenancy start date of December 1, 2015. No move-in condition inspection was conducted with a report completed. The Tenant moved out of the unit on July 31, 2016. Rent of \$1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The security deposit has not been returned and the Landlord has not made any application to claim against the security deposit.

The Tenant states that the tenancy agreement was signed on November 1 or 2, 2015 and that no copy of that agreement was ever provided to the Tenant. The Landlord does not recall whether a copy of the agreement was provided. The Tenant states that the forwarding address was provided in writing to the Landlord on August 2, 2017 by placing a handwritten note in the Landlord's mailbox. The Tenant states that the Landlord was again given the forwarding address when the Tenant mailed a letter to the Landlord mid-December 2016. The Landlord states that no forwarding address was ever received by the Landlord. The Tenant describes the time of day that the forwarding address was left in the mailbox by the Tenant and provides the full name of the person who drove the Tenant to the Landlord's residence that day.

The Tenant claims return of the security deposit. The Tenant does not waive any entitlement to return of double the security deposit. The Tenant provides its current mailing address and the Landlord confirms having noted this address.

### Analysis

Section 38 of the Act provides 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. I found the Landlord's evidence to be vague or evasive in relation to the tenancy agreement. I found all of the Tenant's evidence on the other hand to be straightforward and clear. For this reason and given the detailed evidence of the delivery of the forwarding address by the Tenant I prefer the Tenant's evidence and find on a balance of probabilities that the Tenant provided its forwarding address to the Landlord on August 2, 2016.

As the Landlord has not returned the security deposit or claimed against the security deposit and considering that the Tenant has not waived its entitlement under the Act I find that the Landlord must now return double the security deposit of **\$1,600.00** plus zero interest to the Tenant. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,700.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,700.00**. If necessary, this order may be filed in the Small Claims 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: October 19, 2017

---

Residential Tenancy Branch