



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KS & SY HUNG HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and to recover the filing fee for the claim.

This hearing commenced on December 17, 2018, the interim decision should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The fixed term tenancy began on September 1, 2017, and was to expire on August 31, 2018. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenant. The tenancy ended on June 15, 2018.

The tenant testified that they vacated the premises on June 15, 2018. The tenant stated that they provided the landlord with a written notice of the forwarding address by email on July 10, 2018, and in a written letter was sent by registered mail. Filed in evidence is a copy of the email, a copy of the written letter and the Canada post tracking number.

The tenants stated that they received the amount of \$307.28 of their Deposit from the landlord; however, they did not authorize the landlord to retain any amount from the Deposit.

The landlord's agent testified that they did receive the tenant's forwarding address. The agent stated that the tenant removed the blinds from the rental unit. The agent stated that there was a discussion with the tenant that once they knew the cost of the blinds that this amount would be deducted from the Deposit.

The tenant argued that they did not agree that the landlord could retain any amount from the Deposit. The tenant stated that the blind in question was really old and broken at the start of the tenancy. The tenant stated that there were some other blinds that were new. The tenant stated that they were only willing to negotiate an amount, not pay for the entire blind. The tenant stated that they also left the blind on the window that they used to replace the broken blind.

### Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(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.

(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.

I accept the undisputed testimony of the parties that the landlord had received the tenant's forwarding address in writing. I accept the landlord did return a portion of the tenant's Deposit.

However, I am not satisfied the landlord had the tenants written agreement to retain any amount of the tenant's Deposit as required by section 38(4)(b) of the Act. Further, the landlord did not make any application claiming against the Deposit as required by section 38(1)(d) of the Act. I find the landlord has breached section 38 of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as the written consent of the tenant. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act that the landlord pays the tenant the sum of **\$1,600.00**, comprised of Deposit held on the original amount. This amount will be reduced by the amount returned to the tenant in the amount of \$307.28 Therefore, I find the tenant is entitled to recover the amount of **\$1,292.72**.

Since the tenant was successful with their application, I find the tenant is entitled to recover the cost of the filing fee from the landlord in the amount of **\$100.00**.

I find the tenant is entitled to a monetary order in the total amount of **\$1,392.72**, comprised of the above amounts. The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord 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. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

#### Conclusion

The tenant's' application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: February 19, 2019

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Residential Tenancy Branch