



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      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 their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and argument. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

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

### Background and Evidence

Both parties agreed to the following. The tenancy began on October 1, 2014 and ended on September 30, 2021. The tenant was obligated to pay \$859.97 per month in rent in advance and at the outset of the tenancy the tenant paid a \$370.00 security deposit. IC testified that a written condition inspection report was conducted at move in but not at move out, nor was any opportunity to do one given to the tenant. IC testified that the

tenant moved out early on September 13, 2021 and provided her forwarding address to the landlord as well again on February 10, 2022. IC testified that the landlord did not file an application or obtain the tenants permission to retain the deposit. IC requests the return of double the deposit.

EN testified that a phone call and email was done to arrange a move out inspection but didn't hear back from the tenant. EN testified that he does not have a copy of the email in his evidence. EN testified that the unit was left dirty and doesn't agree with the tenants claim. EN confirmed that he has not filed an application to retain the deposit or have permission from the tenant to keep it.

### Analysis

Section 35 of the Act requires the landlord and tenant to complete a move out inspection. The section goes on to require the landlord to complete a move in Condition Inspection Report that is to be signed by both parties. Section 35(5) states that the landlord must make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities for the inspection, in accordance with the Residential Tenancy Regulation, and the tenant has failed to participate in either opportunity.

Section 17 of the Regulation states the landlord must offer a tenant, for move in or a move out inspection, a first opportunity but if the tenant cannot attend the landlord must propose **a second opportunity to the tenant by providing the tenant with a notice in the approved form.**

The landlord acknowledged and conceded that they did not have evidence at this hearing to show that a second opportunity in writing in the approved form was given. As such, I find that the landlord has not complied with section 35 of the Act. Section 36 of the Act, states that if a landlord fails to comply with section 35 of the Act, they extinguish their right to claim against the deposit for damage to the rental unit.

I therefore find that the landlord has extinguished their right to claim against the security deposit. And as such, the landlord had no entitlement to retain any amounts from the security deposit.

Section 38(1) of the Act stipulates that a landlord must, within 15 days of the end of the tenancy or receipt of the tenants forwarding address; whichever the later, either return

the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) of the Act stipulates that should the landlord fail to comply with section 38(1) the landlord must pay the tenant double the security deposit. The landlord acknowledged that they received the tenants forwarding address in writing on February 10, 2022 and have not done either as required and noted above.

As I have found that the landlord had no authority to retain any of the security deposit due to their failure to comply with section 35 of the Act, I find that the tenant is entitled to the return of double the security deposit in the amount of \$740.00 plus \$2.31 in accrued interest.

### Conclusion

The tenant has established a claim for \$742.31. I grant the tenant an order under section 67 for the balance due of \$742.31. 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: April 27, 2023

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Residential Tenancy Branch