



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenant for a monetary order for return of double the security deposit.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 15, 2013, a Canada post tracking number was provided as evidence of service. The tenant stated the Canada post track history indicated the package was successfully delivered on August 16, 2013. The landlord did not appear.

I find that the landlord has been duly served in accordance with the Act.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The tenant stated the landlord was served with their evidence package on October 19, 2013, in person which was witnessed. I find the landlord has been duly served with the tenant's documentary evidence in accordance with the Act.

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 security deposit?

### Background and Evidence

The tenant paid a security deposit of \$275.00. The tenant stated that she agreed to pay the landlord \$550.00 per month to rent a bedroom in the basement suite, which was going to be shared with another tenant. The tenant stated the landlord had a separate living accommodation upstairs.

The tenant testified that the tenancy was to commence on July 1, 2013, however, she did not take possession due to finding the bedroom unclean and mould was growing along the bottom of a wall, which appeared to be coming from the other side of the wall where the washer and dryer are located. Filed in evidence is a photograph of the rental unit.

The tenant testified on July 18, 2013, she provided the landlord with her forwarding address in a letter, which was sent the same day by registered mail. The tenant stated the Canada post track history indicated the package was successfully delivered. Filed in evidence is a copy of the letter.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

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 an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

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.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$550.00 comprised of double the security deposit (\$275.00) the interest on the original amount.

The tenant is given a formal order 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.

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: November 13, 2013

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Residential Tenancy Branch

