



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TWIN TOWER APARTMENTS  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the remainder of THE security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

Both parties acknowledged that the deposit of \$350.00 was paid when the tenancy began in June 2011 and that the tenancy ended effective September 30, 2013. The forwarding address was received by the landlord at the end of the tenancy and on only \$275.00 of the security deposit was refunded to the tenant.

The landlord testified that \$75.00 was retained for cleaning costs.

The tenant testified that the landlord did not refund the total deposit nor make an application to keep it within 15 days of receiving the address. The tenant is seeking compensation of double the security deposit under section 38(6)(b) of the Act.

### **Analysis**

Security deposits are funds held in trust by the landlord for the tenant. I find that section 38 of the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant at the end of the tenancy, then the landlord's right to merely keep any portion of the deposit does not exist.

However, at the end of a tenancy, a landlord is at liberty to make an application for dispute resolution seeking to keep the deposit to satisfy a liability or obligation of the tenant. In order to make such a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the tenancy ended and the forwarding address was received. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

The landlord had submitted evidence with respect to damages for cleaning costs. However, I am not able to hear, nor consider, evidence with regard to any claims by the landlord relating to damages and loss because this hearing has been convened solely to deal with the *tenant's* application under section 38 of the Act. That being said, I must point out that the landlord is still at liberty to make a separate application if the landlord decides to initiate a formal claim for compensation for damages pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, this tenant is entitled to be paid double the \$350.00 security deposit for a total of \$700.00 minus the \$275.00 already refunded leaving \$425.00 to be refunded.

I find that the tenant is also entitled to be reimbursed the \$50.00 the cost of filing the application for total monetary compensation of \$475.00.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$475 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and if necessary can be enforced as an order of that Court.

**Conclusion**

The tenant is successful in the application and is granted a monetary order for double the security deposit, less the amount previously refunded.

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: January 21, 2014

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Residential Tenancy Branch

