



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MNDC, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income and for the filing fee. The tenant applied for a monetary order for the return of double the security deposit.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on July 16, 2014 to the address provided by the landlord on his application for dispute resolution. The tenant provided a tracking number. Despite having been served the notice of hearing and having made application for dispute resolution, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Since the landlord did not attend the hearing, his application is dismissed. Accordingly, this hearing only dealt with the tenant's application for the return of double the security deposit.

### **Issues to be decided**

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

### **Background and Evidence**

The tenancy started on November 01, 2013 for a fixed term of one year. The monthly rent was \$1,950.00 and prior to moving in the tenant paid a security deposit of \$1,000.00.

The tenant stated that her roommate moved out and she was unable to pay rent. On February 28, 2014, the tenant provided written notice to the landlord, to end the tenancy effective April 01, 2014. The tenant made efforts to find a new tenant to take over the lease and was successful in her efforts. A new tenant moved in on April 01, 2014.

The tenant filed copies of text messages between the landlord and herself regarding the return of the security deposit. In a text message, the landlord stated that he had every intention of returning the deposit. The tenant stated that the landlord failed to return the deposit and stopped communicating with her.

On April 14, 2014, the landlord made an application for a monetary order for a rent differential. He served application to the tenant at her new address. In his application, he states that the new tenant pays \$150.00 less per month and therefore the landlord is claiming a total of \$1,050.00 for the loss of income he has suffered, due to the rent differential for the balance of the fixed term. The landlord is also claiming \$100.00 for parking fines. In his application the landlord has not check marked the box to retain the security deposit nor has he mentioned the security deposit in the description of his claim.

The tenant stated that she had found the new tenant on behalf of the landlord and stated that during the time she was making the arrangements with the new tenant to take over her lease, the landlord did not inform her that he had rented to the new tenant at a reduced rent.

### **Analysis**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

In this case, the landlord filed his application on April 14, 2014 which is within the legislated time frame of 15 days. However the landlord did not apply to retain the security deposit. The landlord was notified that the tenant had applied for the return of double the security deposit, but did not attend the hearing.

Since the landlord did not return the security deposit to the tenant, did not apply to retain the deposit and did not attend the hearing despite having been served with the tenant's application for double the security deposit, I find that the tenant is entitled to the return of double the security deposit.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$1,000.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for \$2,000.00, which represents double the base security deposit. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$2,000.00**. The landlord's application is dismissed in its entirety.

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: August 19, 2014

---

Residential Tenancy Branch

