



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD

### **Introduction**

This hearing was convened in response to an application by the tenant under the Residential Tenancy Act (the Act) for a monetary order for the return of the security deposit in the amount of \$525.00.

Both the tenant and the landlord were represented at today's hearing. Both parties acknowledged receiving the evidence of the other. The parties were given opportunity to discuss and settle their dispute and to present all *relevant* evidence and testimony in respect to the application and to make *relevant* prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the tenant entitled to the return of the security deposit in the amount claimed?

### **Background and Evidence**

The *undisputed* facts of the parties are as follows. The tenancy began June 01, 2012 and ended June 01, 2014. The landlord collected a security deposit of \$525.00 at the outset of the tenancy and still retains it in trust. There was no move in or move out condition inspections conducted in accordance with the Act. There was a mutual inspection conducted at the end of the tenancy and the parties discussed the condition of the unit, although the results of the inspection were not recorded by the landlord as required by Section 35 of the Act. The parties disagreed as to the condition of the rental

unit at the end of the tenancy and as a result the parties did not agree as to the administration of the \$525.00 security deposit and did not effectively communicate thereafter.

Despite the abundance of evidence provided by the tenant they did not advance evidence in respect to providing the landlord with their written forwarding address, although it is clear an address for the tenant is provided in the tenant's application for dispute resolution of August 26, 2014.

### **Analysis**

It must be noted that a tenant's security deposit belongs to the tenant and that it is simply retained in trust by the landlord during the period of the tenancy. At the end of the tenancy it must be administered in accordance with the Act. **Section 37** of the Act effectively states that the tenant has a right to return of the security deposit if they leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. None the less, the parties may otherwise arrive at mutual agreement as to disposition of the deposit. If there is dispute over its return or disposition the tenant may apply for its return *in accordance with the Act*; and, the landlord may make a claim against the deposit *in accordance with the Act*.

On preponderance of the evidence and on the balance of probabilities, I find that in the absence of opposing evidence, the tenant provided their written forwarding address to the landlord solely within their application for dispute resolution. Therefore in such circumstances the landlord is deemed to have first received the written forwarding address on the date they received the tenant's application.

**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** to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing, the landlord is liable under **Section 38(6)**, which provides that the landlord must pay the tenant *double* the amount.

In this case, the tenant has not provided evidence they gave the landlord their forwarding address in writing until it was included in the application for dispute resolution, and effectively the landlord is deemed to have the tenant's forwarding address *as of the hearing date*.

**I Order** that the landlord will be deemed to have received this Decision 10 days after it is dated / written and **must** within 15 days of that date return the security deposit **or** make an application to retain all or a portion of it if they have proof to support such claim. **I Order** that if the landlord fails to do either of these the tenant may re-apply for *double* the amount of the security deposit.

### **Conclusion**

The tenant's application is dismissed, with leave to reapply for *double* the security deposit, if necessary.

The landlord **must** within 15 days of the date this Decision is deemed received return the security deposit **or** make an application to retain all or a portion of it.

**This Decision is final and binding on both parties.**

*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: March 05, 2015

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Residential Tenancy Branch

