



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER HORIZON REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, O, FF

### Introduction

The tenant applies to recover the remainder of a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “*Act*”). She also seeks other, unstated relief. The other relief was not raised by her at this hearing.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is owed deposit money or that it should be doubled under s.38 of the *Act*?

### Background and Evidence

The rental unit is a two bedroom “plus den” condominium apartment. The tenancy started in August 2014 and ended around July 21, 2015. The monthly rent was \$1100.00. The tenant paid a \$550.00 security deposit at the start of the tenancy.

The written tenancy agreement shows the landlord to be a Mr. A.W. “by his agent” the corporate respondent.

The parties conducted a move out inspection together. A condition report was completed and signed by the tenant. She objects that she did not receive her copy of the report within the time allotted under the *Act*.

The report authorizes the landlord to retain from the security deposit the amount of \$200.00 for a fine, \$100.00 for a fob and \$20.00 for patio cleaning.

Mr. P.M. for the landlord acknowledges that the \$100.00 fob charge was only if the tenant did not return the fob, which she did, and that the \$20.00 deck cleaning charge was only if the incoming tenants demanded that the deck be cleaned, which they didn't.

In result, under the written condition report the tenant authorized the landlord to retain \$200.00 for the fine; a strata council fine.

The tenant provided the landlord with a written forwarding address in late July 2015.

The landlord retained the \$200.00 and an additional \$50.00 from the deposit money, providing the tenant with a cheque for \$300.00, which she has cashed.

Mr. P.M. says the additional \$50.00 was because an additional strata fine had been levied against the owner, allegedly for conduct at the premises during the tenancy.

### Analysis

The fact that the tenant may not have received her copy of the move out report within the statutory time period does not incur any penalty and is not germane to the application.

Section 38 of the *Act* provides that once a tenancy has ended and once the landlord has been given the tenant's forwarding address in writing the landlord must either repay the deposit to the tenant or make an application for dispute resolution for an order authorizing it to keep all or a part of it. The landlord must do one or the other within 15 days. Breach of that provision results in the landlord having to account to the tenant for double the deposit.

In this case the landlord kept \$250.00 of the deposit but only had the tenant's written authorization to keep \$200.00 of it. The landlord has therefore breached s. 38 and is subject to the doubling effect of that section.

In calculating the amount to be doubled, a question arises whether the amount to be doubled is the amount remaining at the end of the tenancy or the remainder after any lesser sum has been repaid by the landlord.

In my view, in the event a landlord breaches s. 38, the amount to be doubled is the entire deposit remaining at the end of the tenancy, that is: the original deposit less i) any amount the tenant has agreed in writing the landlord may keep, and/or ii) any amount remaining unpaid under a monetary order issued under the auspices of the director of the Residential Tenancy Branch.

Firstly, s. 38(6)(b) says that a landlord who breaches section 38 must pay the tenant double "the amount of the security deposit." Had it been intended that only the amount of the security

deposit remaining unpaid after the fifteen day period be doubled, I think the drafter of the legislation would have said so.

Additionally, Guideline 17 "Security Deposit and Set off [sic]" specifies what amounts are not to be doubled. It provides:

4. In determining the amount of the deposit that will be doubled, the following are excluded:

- any arbitrator's monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

The Guideline does not specify that any portion of the deposit actually paid to the tenant is to be excluded before the doubling. It would have been a simple matter to do so.

Further, if only the balance of the deposit remaining after a unilateral deduction by the landlord is the amount to be doubled, it would, in my view, promote the unilateral keeping of a portion of a deposit by a landlord, up to an amount the landlord considers to be not worth the tenant's while to apply to recover, even if that modest remainder were doubled. That would be contrary to the purpose of the legislation as consumer protection legislation and would lead to mischief.

It follows that the tenant is entitled to double the \$350.00 security deposit remaining at the end of the tenancy, less the \$300.00 received, a remainder of \$400.00, plus recovery of the \$50.00 filing fee paid for this application.

### Conclusion

There will be a monetary order against the corporate landlord in the amount of \$450.00.

The landlord is at liberty to apply to recover the \$50.00 strata fine from the tenant.

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, 2015

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Residential Tenancy Branch

