



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADKA TRADING & FINANCE CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The tenant seeks to recover a \$2000.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

The landlord claims it as a payment of rent to which he is entitled.

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

What was the nature of the \$2000.00 and was it a security deposit?

### Background and Evidence

The rental unit is a two bedroom bungalow on an acreage containing other rental units.

The landlord and tenant viewed the property, the tenant wanted to rent it, and, on April 17, 2017 the tenant signed an “Application to Rent” document provided by the landlord. Accompanying the document, the tenant paid the landlord \$2000.00 cash and gave him a cheque for \$625.00.

The Application to Rent the tenant signed stated the rent would be \$1250.00 starting May 1, 2017 for a twelve month term and that a security deposit of \$625.00 and a pet damage deposit of \$625.00 would be required.

The document states "I/We deposit \$2500 as earnest money to be returned to me/us if this application is not accepted in three (3) business banking days. Upon acceptance, this deposit shall be retained as part of the first rent payment and is non-refundable."

The landlord accepted the tenant's application within three days and notified her.

The parties met again April 24. The tenant was planning to move furniture in the next day.

The landlord presented the tenant with a written tenancy agreement indicating the term set out in the Application to Rent, the rent to be \$1250.00 and that the two deposits of \$625.00 each were required.

The tenancy agreement offered by the landlord also purported to charge a \$45.00 per month parking fee and \$145.00 per month for water, garbage and sewage costs. The tenant did not agree and refused to sign the tenancy agreement.

The landlord returned the uncashed \$625.00 cheque. The parties went their separate ways. The landlord retained the \$2000.00 payment the tenant had made.

The tenant wrote to the landlord requesting return of the \$2000.00 and providing a forwarding address. It was not returned and so the tenant brought this application.

The landlord takes the position that the \$2000.00 was applied to rent.

### Analysis

Under the terms of the Application to Rent, the tenant's application was accepted and so the landlord was entitled to retain the money towards rent that would be accruing on May 1.

It is apparent that prior to the landlord's presentation of the tenancy agreement on April 24, the parties had not discussed or agreed to the question of parking or the question of which would pay for the utilities of water, garbage or sewer costs.

Given the amounts involved; \$190.00 per month, those terms were fundamental terms of the tenancy agreement. I find that without agreement on those fundamental terms there was no agreement between the parties: there was no “meeting of the minds” required to constitute and enforceable agreement between them.

In the absence of an enforceable tenancy agreement, no “rent” became due on May 1, 2017, against which the landlord could lawfully claim to apply the \$2000.00.

It follows that the tenant is entitled to the return of that \$2000.00.

The remaining question is whether or not the \$2000.00 was a “security deposit.” If it was a security deposit then the landlord has run afoul of s. 38 of the *Act*, which requires that a landlord either apply to keep or to repay deposit money within 15 days after the tenancy ends and the tenant has provided a forwarding address in writing or face a penalty of a doubling of the deposit money.

I find that the \$2000.00 was clearly a security deposit. The *Act* defines “security deposit” as:

**“security deposit”** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

The money the tenant paid was money to be held as security towards her anticipated obligation to pay rent on May 1. It is not included in the list of refundable and non-refundable fees prescribed by regulation under s. 97(2)(k) of the *Act*.

It follows that the landlord has failed to either repay the deposit money or make an application to keep it within the 15 day period or at all. The tenant is entitled to have the \$2000.00 deposit money doubled to \$4000.00. She is also entitled to recover the \$100.00 filing fee for this application.

### Conclusion

The tenant’s application is allowed. She will have a monetary order against the landlord in the amount of \$4100.00.

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 08, 2017

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Residential Tenancy Branch