



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord including return of double his security deposit and to recover the filing fee.

The hearing was conducted by teleconference on November 2, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application by Canada Post Express post. A copy of the receipt confirming the Landlord signed for this on May 30, 2017 was provided in evidence by the Tenant. Based on this evidence I find the Landlord was duly served as of May 30, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The tenancy began December 1, 2016. The Tenant paid a security deposit in the amount of \$500.00.

The Tenant testified that the Landlord failed to perform a move in or move out condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*.

The Tenant vacated the rental unit on April 30, 2017 after receiving a 2 Month Notice to End Tenancy for Landlord's Use issued on March 30, 2017 (a copy of which was provided in evidence). The Tenant also provided a copy of his letter dated April 20, 2017 wherein he gave the Landlord 10 Days' Notice that he would be vacating the rental unit as of April 30, 2017.

The Tenant testified that when he moved out the Landlord threatened to withhold the \$1,000.00 (which was due as a result of the 2 Month Notice) unless the Tenant agreed to an \$88.39 deduction from his security deposit for utilities. The Tenant stated that the Landlord told him that if he didn't sign it, the Landlord would not pay him anything. Introduced in evidence was a copy of the document the Landlord insisted he sign; notably, the Tenant's signature is not on the copy provided in evidence; the Tenant advised that he could not remember if he signed the document as the Landlord retained a copy. In any event, the Tenant testified that if he did sign the document it was under duress as he was afraid the Landlord would not provide him the \$1,000.00.

The Tenant also stated that he did not receive any copies of utility bills to support the Landlord's claim for \$88.39 for utilities.

The Tenant confirmed that the Landlord made further deductions without his consent and in fact retained a total of \$187.24 from the security deposit, rather than the \$88.39 he originally request for utilities. The Tenant stated that he received a cheque for \$312.76 from the Landlord (a copy of which was in evidence).

The Tenant also confirmed that the Landlord failed to make an application to the residential tenancy branch for authority to retain his deposit.

The Tenant also stated that he believes the Landlord should not have retained any funds from his security deposit as the Landlord's right to claim against those funds was extinguished when he failed to perform the move in and move out inspections. Notably, on the 10 day notice from the Tenant, the Tenant asked the Landlord to schedule a move out condition inspection and reminded the Landlord of his obligations pursuant to section 35 of the *Residential Tenancy Act*.

## Analysis

The Tenant applies for return of double his security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage

against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed evidence that he did not agree to the Landlord retaining \$187.24 from his security deposit. I further accept the Tenant's evidence that while he may have signed a document indicating he agreed to the Landlord retaining \$88.39, he did so under duress as the Landlord threatened to withhold the \$1,000.00 which was due to him as a result of the 2 Month Notice to End Tenancy for Landlord's Use. Further, I find that the Landlord repudiated any such agreement by retaining more than the \$88.39.

I accept the Tenant's evidence that the Landlord failed to give him copies of the utility accounts prior to their discussion on the day the Landlord demanded; consequently, the Tenant was not afforded an opportunity to review those accounts.

In all the circumstances I do not find the parties entered into a binding agreement regarding the Landlord's request to retain the sum of \$88.39 from the Tenant's security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on April 20, 2017. The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

Additionally, by failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished his right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I accept the Tenant's evidence that the Landlord returned the sum of \$312.76.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$787.24**, comprised of double the security deposit ( $2 \times \$500.00 = \$1,000.00$ ) plus recovery of the \$100.00 fee for filing this Application less the \$312.76 already received by the Tenant.

### Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$787.24**. The Tenant must serve the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 2, 2017

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Residential Tenancy Branch