



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for a monetary order for the return of their security deposit pursuant to Section 38 of the Act.

Both parties attended the hearing and were given full opportunity to present *relevant* evidence, testimony and *relevant* prior submissions. The landlord acknowledged receiving the tenant's application and evidence, and that they themselves had not provided prior submissions of evidence. The parties were provided opportunity to mutually resolve their dispute to no avail. The hearing advanced on the merits of the tenant's application. 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 monetary amount claimed respecting the security deposit?

### **Background and Evidence**

The *relevant* evidence in this matter is as follows. The parties agreed the tenancy began December 01, 2017 and ended June 30, 2018. At the outset of the tenancy the landlord collected a security deposit in the amount of \$425.00 which the landlord held in trust during the tenancy and subsequently returned a portion, retaining the balance.

The landlord acknowledged they did not conduct a *move in* or *move out* condition inspection with the tenant in accordance with the Act and that at the end of the tenancy the parties did not agree as to the administration of the tenant's deposit. The parties agree the tenant personally provided the landlord their written forwarding address on July 17, 2018.

The landlord testified that after the tenancy ended they determined the tenant was responsible for some damage to the rental unit and deducted an amount they deemed appropriate from the security deposit of \$125.00 and returned to the tenant a cheque in

the amount of \$300.00. The tenant did not agree with the landlord's assessment of damages and determined they were entitled to the full return of their deposit.

### **Analysis**

*The parties can access referenced publications and other resources at [www.bc.ca/landlordtenant](http://www.bc.ca/landlordtenant).*

I find that **Sections 24 and 36** of the Act - **Consequences for tenant and landlord if report requirements not met** - clearly state that if the landlord effectively does not conduct the required condition inspections in accordance with the Act *the landlord's right to claim against the security or pet damage deposit is extinguished*, therefore leaving the landlord solely an obligation to return to the tenant their deposit in full once having received the tenant's forwarding address. *It must be noted that returning deposits does not preclude a landlord from making an application for damages within the time permitted under the Act (Section 60(1), 2 years from the end of the tenancy).*

In this matter I find **Section 38(1)** of the Act provides that the landlord must return the deposit(s) of the tenancy or apply for dispute resolution making a claim against the deposit(s) within 15 days after *the later of* the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address in writing on July 17, 2018 and, under the circumstances of this matter of being precluded from making a claim against the security deposit, I find the landlord sole recourse was an obligation to repay any deposit in its entirety within 15 days after receiving the tenant's forwarding address. However, the landlord returned solely a portion of the deposit and retained the balance without the tenant's agreement. As a result the Act prescribes pursuant to **Section 38(6)** that the landlord **must** pay the tenant *double* the amount of any deposit as applicable.

I find the tenant is entitled to compensation prescribed by **Section 38(6)** of the Act requiring the landlord to pay the tenant *double* the amount of their original deposit in the sum of \$850.00. There is no applicable interest assigned to the deposit in this matter. I deduct from the tenant's entitlement the amount of \$300.00 already returned by the landlord, for a net award to the tenant in the amount of **\$550.00**.

**Conclusion**

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$550.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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 29, 2018

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Residential Tenancy Branch