



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

On August 8, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the return of her security deposit. The matter was set for a conference call.

Both the Tenant and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of her security deposit?

### Background and Evidence

The testimony of both parties was that the tenancy began on December 21, 2017. Rent in the amount of \$1,600.00 was to be paid by the first day of each month, and the Tenant paid the Landlord an \$800.00 security deposit (the deposit).

It was also agreed that the tenancy ended on June 30, 2018, in accordance with the *Act*. Both parties agreed that the move out inspection was conducted that same day and that the Tenant provided her forward address on the move-out inspection report. Both the Landlord and the Tenant testified that the Landlord returned \$730.00 of the Tenant's \$800.00 deposit to the Tenant, via e-transfer on July 19, 2018.

The Tenant testified that she had given the Landlord written and verbal permission to keep \$35.00 of her deposit. The Tenant provided a copy of the last page of the move-out inspection into documentary evidence.

The Landlord testified that the Tenant had given her written permission to retain \$75.00 of the deposit due to additional cleaning that we need at the end of the tenancy.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I have reviewed the last page of the move-out inspection, provided into evidence by the Tenant and I find that the Tenant's documentary evidence matches the Landlord's verbal testimony. I find that the Landlord had received written permission to retain \$75.00 from the Tenant's deposit for this tenancy.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

### ***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.*

I find that this tenancy ended, in accordance with the *Act*, on June 30, 2018, the date the tenant moved out and that the Landlord received the Tenant's forwarding address. Accordingly, I find that the Landlord had until July 15, 2018, to comply with section 38(1) of the *Act* by either repaying the remaining deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the remainder of the deposit. In this case, the Landlord returned the remaining \$730.00 of the Tenant's deposit via e-transfer, on July 19, 2018, four days outside of the legislated timeline.

I find that the Landlord breached section 38(1) of the *Act* by not returning the remainder of the Tenant's deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

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

- 38 (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.*

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven her entitled to the return of double the security deposit. I find for the Tenant, in the amount of \$800.00; consisting of \$1,600.00 for the return of double the security deposit, less the \$730.00 that the Landlord has already returned and less the \$75.00 the Landlord had been given permission to retain from the deposit.

**Conclusion**

I find that the Landlord breached section 38 of the *Act* when she failed to repay the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 of the Act. I grant the Tenant a **Monetary Order** in the amount of **\$800.00**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this 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: December 11, 2018

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Residential Tenancy Branch