



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNSD      Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Despite having been duly served by registered mail sent on September 4, 2008, verified by a registered mail receipt submitted by the tenant into evidence, the landlord did not appear

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?

- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof is on the applicant.

### **Background and Evidence**

The tenant submitted into evidence, proof that the tenant's forwarding address was mailed to the landlord by registered mail sent to the landlord's address on July 15, 2008. The evidence also included a copy of the receipt for \$550.00 security deposit paid to the landlord. The tenant testified that the deposit was paid on May 19, 2008 and that on May 28, 2008, the tenant was informed that the manager to whom the tenant paid the security deposit had absconded with the funds. The tenant testified that the tenant was then forced to find alternate accommodation. After the tenant's forwarding address was sent by the tenant to the landlord, along with a request to have the deposit returned, the landlord apparently came to tenant's home looking for the tenant. Evidently the landlord's position was that the tenant was not entitled to a refund and, moreover, he considered the tenant's request for the return of the deposit to be a "threat". The tenant was alarmed by the landlord's conduct and allegations. The tenant merely wants the deposit returned as prescribed by the Act and to have no further contact with this landlord.

### **Analysis**

In regards to the return of the security deposit, I find that section 38 of the Act is clear. The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy to satisfy a debt owed to the landlord.

A landlord can make an application for dispute resolution to get an order to keep the deposit to satisfy a liability or obligation of the tenant after the end of the tenancy. However, in order to make a claim against the deposit, the application for dispute resolution must be filed within 15 days after the forwarding address was received. In any case, if find as a fact that no debt was owed by the tenant to this landlord.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so, nor did the landlord refund the deposit within the required 15 days after receiving the forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that under section 38, the tenant is entitled to be paid double the security deposit that was wrongfully retained by the landlord, in the amount of \$1,100.00 plus interest of \$3.58 and is also entitled to reimbursement of the \$50.00 fee paid by the tenant for this application.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,153.58 and hereby issue a monetary order for this amount in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

October 24, 2008

Date of Decision