



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** *MNSD, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order for the return of all of the security deposit plus an amount equal to the security deposit and an order to recover the filing fee for the cost of this application.

The tenant applied for dispute resolution on November 17, 2008 and notified the landlord of the hearing by registered mail on November 21, 2008. Despite having been duly notified, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

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

Is the tenant entitled to the return of all of his security deposit, an amount equal to the security deposit, and the filing fee?

### **Background and Evidence**

The tenancy started on August 01, 2006. Rent was set at \$775.00 and the tenant paid a security deposit of \$375.00 and a pet deposit of \$100.00 on August 01, 2006. A move in inspection was conducted and the tenant was provided with a copy of the report. At the start of the tenancy, the tenant had a room mate who later moved out in September 2007. The tenant verbally advised the landlord that he was the only occupant of the home and subsequently received notices of rent increases in his name only.

The tenant moved out on October 15, 2008 and prior to moving out participated in a move out inspection conducted by the landlord on October 14, 2008.

At the time of the inspection, both parties agreed that a broken screen was the only deficiency and the tenant replaced it on October 30, 2008. The tenant was not provided with a copy of the move out condition inspection report. At the time of the delivery of

the fixed screen, the tenant gave the landlord a letter which requested the return of the security and pet deposits and provided the landlord with the tenant's forwarding address.

The landlord mailed a letter to the tenant on November 10, 2008, stating that she was retaining \$100 towards the clean up of the outside vinyl siding that the tenant was responsible for. She also retained \$187.50 which she stated she had mailed to the tenant's room mate. The tenant received a cheque in the amount of \$187.50.

### **Analysis**

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit. The landlord did not return the entire security deposit to the tenant nor did she make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. Hence, pursuant Section 38 (6) of the *Residential Tenancy Act*, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Section 38 (4) (a) states that a landlord may retain an amount from a security deposit or a pet deposit if, at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount. In this case, I find that the tenant did not agree in writing to any deduction off the deposits. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit or may apply for arbitration for its return. In addition, the landlord also failed to give the tenant a copy of the move out inspection report. Pursuant to Section 36 (20) the landlord's right to claim against a security deposit or a pet deposit or both is extinguished, if the landlord does not complete the condition inspection report and give the tenant a copy of it.

The landlord submitted a note to state that she had sent a cheque in the amount of \$187.50 to the tenant's room mate. However, the landlord did not attend the hearing to corroborate this evidence. I find that the tenant made a verbal tenancy agreement with

the landlord when he advised her that his room mate had moved out. She confirmed this when she served the rent increases on the tenant in his name only. The responsibility falls to the tenants to apportion among themselves the amount owed by the landlord.

I find that the tenant has established his claim for the return of his security and pet deposits and the landlord's right to make a claim against this deposit is extinguished. The tenant is also entitled to the recovery of his filing fee. Accordingly, I grant the tenant a monetary order in the amount of \$639.75 which consists of the following:

1.	Balance of deposits (\$475.00) after \$187.50 returned to tenant	\$287.50
2.	Double the base deposit	\$287.50
3.	Interest	\$14.75
4.	Filing fee	\$50.00
	Total	<b>\$639.75</b>

### **Conclusion**

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the amount of **\$639.75**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated December 10, 2008.

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Dispute Resolution Officer