



# 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 for double the return of the security deposit and recovery of the filing fee for this application. The tenant's agent participated in the hearing and gave affirmed testimony. Despite being served with the application for dispute resolution and notice of hearing, the landlord did not participate in the hearing.

### **Issues to be Decided**

- Whether the tenant is entitled to a monetary order under the *Act*

### **Background and Evidence**

The term of tenancy was from October 31, 2007 to June 30, 2008. While rent was paid to the end of June 2008, the tenant vacated the unit on June 24, 2008. Rent in the amount of \$800.00 was payable each month. On October 18, 2007, the landlord collected a security deposit from the tenant in the amount of \$800.00.

A move-out inspection was scheduled to take place at the unit on or about June 15, 2008. This arrangement was cancelled by the landlord and re-scheduled to take place on June 24, 2008. On that occasion the landlord was represented by her brother who declined to return the tenant's security deposit. Instead, the landlord's brother took the position that the tenant was responsible for costs of repair to water damage of the ceiling in the unit located immediately below the tenant's unit. This damage allegedly occurred as a result of misuse of the dishwasher in the tenant's unit.

Subsequently, the tenant communicated with the landlord and supplied information consistent with the proposition that the water damage occurred and was repaired prior to the time when he moved into the unit. Information provided by the tenant included a statement from the occupant of the unit where ceiling damage and repairs had taken place. In spite of the tenant's communications, the landlord failed to return the tenant's security deposit.

The tenant's agent provided the tracking number for registered mailing of the application for dispute resolution and notice of hearing package to the building wherein the office of the landlord's strata agent is located. The package was returned with the envelope marked, "refused" and a manual notation on the envelope reads "no suite #."

The tenant's agent also provided the tracking number for duplicate registered mailing of the application for dispute resolution and notice of hearing to the landlord's personal address on November 15, 2008. The landlord's website provides address particulars which are identical to the address information which the tenant's agent stated were used for the duplicate mailing. Canada Post's on-line tracking confirms that delivery of this package was attempted on November 20, 2008 and a notice card was left indicating where the package could be picked up.

### **Analysis**

I am satisfied that the application for dispute resolution and notice of hearing were served on the landlord.

In spite of the provisions set out in section 19 of the *Act* which limit the security deposit to an amount which is not greater than  $\frac{1}{2}$  of one month's rent payable under the tenancy agreement, I note in this case that the security deposit paid by the tenant was double that amount, or equivalent to one month's full rent.

On the basis of the documentary evidence and the undisputed testimony of the tenant's agent, I find on a balance of probabilities that the ceiling was damaged and repaired prior to the time when the tenant took possession of the unit. In the result, there is no

evidence to support the landlord's position that the tenant is somehow responsible for the damage or the repair costs.

Accordingly, I find the tenant has established a claim for \$1,663.57. In part, pursuant to section 38 of the *Act*, this amount is comprised of double the return of the security deposit (\$1,600.00). Additionally, the tenant is entitled to interest on the amount of the original security deposit (\$13.57) and to recovery of the \$50.00 filing fee.

### **Conclusion**

I hereby grant the tenant a monetary order under section 67 of the *Act* for **\$1,663.57**. This order must be served on the landlord and may be filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 3, 2008

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Dispute Resolution Officer