



# 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 the tenant's application for a monetary order for double the return of a portion of the security deposit, and recovery of the filing fee for this application. Both parties participated in the hearing and each gave affirmed testimony.

## **Issue to be Decided**

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

## **Background and Evidence**

The parties previously appeared in a hearing before a dispute resolution officer on June 18, 2008, which resulted in a decision of the same date. The ANALYSIS and DECISION addressing the cross applications of the parties reads, in part, as follows:

7) .....The tenant [name blocked out] received a cheque from the landlord dated March 14, 2008, in the sum of \$235.75 as the balance of the security deposit and interest after making deductions that he was not authorized to retain.

12) The tenant received \$235.75 of the \$600.00 deposit within 15 days of giving the forwarding address, leaving \$364.25 of the deposit unpaid. He is entitled to the return of double the balance of the security deposit of \$364.25 plus interest, which I calculate in the sum of \$741.72.

Finally, the CONCLUSION in the above decision reads:

13) The landlord is entitled to recover the sum of \$2154 and the tenant is entitled to recover \$741.72. Off setting these amounts leaves the tenant owing the landlord the sum of \$1412.28, which sum is to be paid forthwith. Each party is to pay their own filing fee, given success is divided.

In concert with this decision, a monetary order dated June 18, 2008 was issued pursuant to which the tenant was ordered to pay to the landlord \$1,412.28.

The tenant testified that subsequent to the hearing and issuance of the above decision and order, he attempted to cash the landlord's cheque for \$235.75. However, he found that he was unable to do so as he claimed the landlord had put a stop payment on the cheque. The tenant submitted a copy of the cheque into evidence which was shown as bank stamped: PAYMENT STOPPED. A copy of the bank's Returned Item Notice accompanying the cheque notes the deposit date as "2008-08-14."

While the landlord asserted he had not received a copy of this cheque, the tenant insisted he had mailed a copy to the landlord. However, the landlord did not dispute that the tenant has still not been paid \$235.75; the landlord argued that the tenant's delay in attempting to cash the cheque rendered it stale and therefore non-negotiable. Considerable animosity was expressed between the parties during the hearing.

### **Analysis**

Section 38(1) of the *Act* provides as follows:

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.

Section 38(6) of the *Act* states:

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.

While the landlord states that his cheque made payable to the tenant simply became stale dated, there is no evidence that he undertook to re-issue it after receiving the tenant's application for dispute resolution, wherein the specific nature of the dispute is identified. Further, in view of the mutual animosity and the bank stamp shown on a copy of the subject cheque, I find it more likely that the landlord put a stop payment on the cheque. On a balance of probabilities I am also persuaded that the tenant mailed the landlord a copy of the bank stamped cheque days in advance of the hearing.

Accordingly, pursuant to section 38(6)(b) of the *Act*, as above, I find that the tenant has established a claim for double the return of his security deposit in the amount of \$235.75 x 2 which totals \$471.50, plus interest of \$7.43. I also find that the tenant is entitled to recovery of the filing fee of \$50.00.

**Conclusion**

Pursuant to all of the above, I hereby grant the tenant a monetary order under section 67 of the *Act* for **\$528.93**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 23, 2009

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Dispute Resolution Officer