

# 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 a monetary order for an amount of the security deposit with compensation under section 38 of the Residential Tenancy Act. The application is also inclusive of recovery of the filing fee. Both, the tenant and the landlord were represented in the hearing and provided testimony respecting the application to.

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed facts before me are as follows:

The tenancy began on August 15, 2006 and ended on December 01, 2008. The landlord collected a security deposit of \$500 at the outset of the tenancy. On December 01, 2008 the landlord received and was in possession of the tenant's forwarding address in writing and request for the return of the security deposit.

**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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Subsequent to, and as a consequence of some text message communication between the parties the landlord determined to hold a portion of the security deposit, in the amount of \$105 without the tenant's agreement, and within 15 days of receiving the tenant's forwarding address forwarded the tenant the balance of \$395. The landlord testified that the amount he withheld was to pay for additional cleaning of the bedroom's carpet, which at the time was disputed by the tenant and to which there was no resolution. In today's hearing the tenant thought differently and testified that on current reflection of the circumstances the landlord was likely entitled to the amount he withheld.

### **Analysis**

The landlord did not fully comply with the requirements of section 38. Despite the tenant's current reflection of the circumstances of when the tenancy ended, I find that the landlord failed to repay the entire security deposit with interest, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing if he thought the tenant was not entitled to the full return of the security deposit and interest; and, is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, as to the tenant's monetary claim, the landlord currently still holds the security deposit in the amount of \$105 , which he was obligated under section 38 to return, along with accrued interest of \$15.48 for the entire security deposit amount of \$500, also still held by the landlord.

I find the tenant has established a claim for the unpaid portion of the security deposit in the amount of **\$105**, accrued interest of **\$0.13** for this amount (for period December 1, 2008 to February 12, 2009), **\$15.48** in unpaid interest to December 1, 2008 and double the unpaid portion of the security deposit in the amount of **\$105**. I also find the tenant is entitled to recovery of the filing fee in the amount of **\$50**, for a total of **\$275.61**.

### **Conclusion**

I grant the tenant an order under section 67 for the sum of **\$275.61**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 12, 2009