

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the amount of the security deposit and compensation under section 38. Despite having been *deemed served* with the application for dispute resolution and notice of hearing by registered mail on January 9, 2009 the landlord did not participate in the conference call hearing.

### **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 July 1, 2008 and ended on November 30, 2008. The landlord collected a security deposit of \$350 at the outset of the tenancy. On November 20, 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:

**Section 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.

38(8) For the purposes of subsection (1) (c), the landlord must use a service method described in **section 88 (c), (d) or (f)** [*service of documents*] or give the deposit personally to the tenant.

**Section 88** provides as follows:

**Section 88** (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

## **Analysis**

I find that the landlord failed to repay the security deposit or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing 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.

The landlord currently holds a security deposit of **\$350** and was obligated under section 38 to return this amount together with the **\$2.40** in interest which had accrued. The amount which is doubled is the \$350 base amount of the deposit before interest.

### **Conclusion**

I find that the tenant has established a claim for **\$702.40**. Therefore, I grant the tenant an order under section 67 for this amount. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 24, 2009