

# 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 the amount of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing.

As a preliminary matter, 10 minutes before the hearing the tenant requested, in writing, to cancel the hearing in favour of the tenant then filing a new application. The tenant's letter did not state the reason for this submission and thus it was heard as a preliminary matter in the hearing. The landlord was in favour of proceeding to avoid future costs and an additional face to face hearing. During this preliminary discussion, the tenant then determined to proceed in the hearing, after all and the hearing proceeded on its merits.

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

Is the tenant entitled to the monetary amounts claimed under section 38?

### **Background and Evidence**

The two (2) *named* landlords for this application each testified at the outset of the hearing that their legal marriage dissolved and turned to a legal separation during the short period of the subject tenancy and remain separated to this day. Their respective positions in today's hearing are in contrast to the other. The wife disputes her

accountability in this matter, claiming she was not a party to the tenancy agreement, and in fact is not on any of the tenancy agreement documents. However, the wife concedes that she acted as an agent for the husband in her collection and reconciliation of rental revenues, including the security deposit at issue in this matter. The tenant testified that all their dealings and payments of rent, as well as the security deposit were made to the wife. The wife does not dispute accepting the security deposit, and claims to have subsequently given it to the husband for his retention. In turn, this information was strongly denied by the husband. In recognition as the landlord, the tenant sent the wife, by registered mail, the tenant's forwarding address in writing together with their request for the return of the security deposit. This submission by the tenant is denied by the wife, stating she did not receive the registered mail and thus did not forward it to the husband. The tracking information provided by the tenant indicates the mail was successfully delivered to the wife's address, but there is no signature confirmation to this effect.

The undisputed facts before me are narrowed as follows.

The tenancy began on August 01, 2008 when the tenants entered into a Tenancy agreement with the husband. The tenancy ended on November 30, 2008. The wife of the landlord collected a security deposit of \$1400 at the outset of the tenancy, and thereafter collected rent from the tenant.

### **Analysis**

On solemn reflection of all the testimony before me, I find the husband was the landlord, and the wife was an agent of the landlord.

On solemn reflection, on the balance and preponderance of probabilities, I find that by December 10, 2008, the landlord's wife is deemed to have received, by registered mail, the tenant's forwarding address in writing, along with their 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.

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 **\$1400** and was obligated under section 38 to return this amount together with **\$7.00** in interest which had accrued. The amount which is doubled is the **\$1400** base amount of the deposit before interest. I find that the tenant has established a claim from the landlord in the amount of **\$2807**. The tenant is also entitled to recovery of the **\$50** filing fee for a total claim of **\$2857**.

### **Conclusion**

I grant the tenant an order under section 67 for the sum of **\$2857**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 04, 2009