

# 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 and is inclusive of a request to recover the filing fee for this application. The application also requests an amount for NSF charges of \$40.

Despite having been *deemed served* with the application for dispute resolution and notice of hearing by registered mail on January 11, 2009, and in compliance with Section 89 of the Residential Tenancy Act (the Act) 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 April 1, 2008 and ended on November 26, 2008. The landlord collected a security deposit of \$600 at the outset of the tenancy. At the end of the first month in the tenancy the landlord collected a pet damage deposit in the amount of \$600. The tenant testified that his forwarding address was clearly stipulated in the

Dispute Resolution package sent to the landlords by registered mail received on January 07, 2009. By the *deemed served* date of January 11, 2009, the landlord received and was in possession of the tenant's forwarding address in writing and request for the return of the security and pet damage deposits, minus \$50 for the replacement of a 'fob'.

**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.

## **Analysis**

I find that the landlord failed to repay the security deposit and pet damage 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.

In the absence of the tenant specifically waiving the doubling of the two deposits being retained by the landlord , within the tenant's application, or in the hearing, I must consider the return of double these deposits to the tenant.

The landlord currently holds a security deposit of **\$550** and a pet damage deposit of **\$600**, and was obligated under section 38 to return this amount together with the **\$11.31** in interest which had accrued. The amount which is doubled is the \$550 and \$600 base amounts of the deposit before interest.

I decline to grant the tenant an award for NSF charges. However, the tenant is entitled to recovery of the filing fee for this application in the amount of **\$50**, for a total entitlement as follows:

Security Deposit X 2	\$1100.00
Pet damage deposit X 2	\$1200.00
Interest on base deposit amounts X 1	\$11.31
Filing Fee	\$50.00
<b>Total Entitlement claim</b>	<b>\$2361.31</b>

### **Conclusion**

I find that the tenant has established a claim for **\$2361.31**. 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 March 04, 2009