

# 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.

Despite having been served with the application for dispute resolution and notice of hearing by registered mail, in accordance with Section 89 of the Residential Tenancy Act (the Act), the landlord did not participate in the conference call hearing. The tenant provided a Canada Post Tracking number for registered mail.

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed facts before me, under solemn affirmation by the tenant, are as follows.

The tenancy began on June 10, 2008 and ended on August 12, 2008. The landlord collected a security deposit of \$1600 and according to the tenancy agreement, also collected a “furniture deposit” of \$1600 at the outset of the tenancy. The landlord is holding a total of \$3200.

According to the tenant's testimony after repeated attempts to communicate with the landlord by phone since September 2008, including verifying the landlord's availability and address with the landlord's agent, the tenant then forwarded a letter to the landlord on January 27, 2009 requesting the return of their deposit and providing an address for that purpose. As per Section 90 of the Act, the landlord is deemed to have received the tenant's information by February 02, 2009. To date the tenant's testimony is that they have not received any communication from the landlord in respect to this matter, and the landlord has not applied for dispute resolution.

### **Analysis**

In addition to the security deposit the landlord collected \$1600 as a "furniture deposit". As there is no provision in the Act for the landlord to legally collect such a deposit, I must determine that the landlord is currently holding a total security deposit in the amount of \$3200.

**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 **\$3200** and was obligated under section 38 to return this amount together with the **\$26.89** in interest which had accrued. The amount which is doubled is the **\$3200** base amount of the deposit before interest.

### **Conclusion**

I find that the tenant has established a quantum claim for **\$6426.89**. The tenant is also entitled to recovery of the **\$50** filing fee. Therefore, I grant the tenant an order under section 67 for the sum of **\$6476.89**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 23, 2009