



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for return of double the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard.

### Issues(s) to be Decided

1. Has the tenant established an entitlement to return of double the security deposit?
2. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony of the parties and review of the evidence before me, I make the following findings. The tenant had paid a \$220.00 security deposit in August 2008. The tenant vacated the rental unit December 15, 2008. The tenant provided the landlord with a letter dated February 10, 2009 by regular mail. The letter requested return of the security deposit and indicated the landlord could telephone the tenant for pick up of the security deposit or mail the security deposit to the address provided on the envelope.

The landlord testified that the tenant vacated early and did not clean the rental unit. Initially, the landlord wanted to hold back \$100.00 from the security deposit but then decided that she would refund the entire amount rather than deal with the matter any more. The landlord acknowledged receiving the letter dated February 10, 2009 and testified that the landlord tried telephoning the tenant to arrange for the pick up of the security deposit but could not reach the tenant by telephone. Upon enquiry, the

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landlord explained that she did not mail the security deposit to the tenant because she wanted the tenant to sign a document acknowledging receipt of the security deposit.

The tenant testified that she had not heard anything from the landlord after sending the letter but testified that she and the landlord had spoken in January 2009.

## Analysis

The landlord's alleged cleaning costs or other damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the security deposit. The landlord is at liberty to make a separate application for damages.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages; however, the landlord loses the right to obtain the tenant's consent if the landlord fails to meet the move-in and move-out inspection report requirements. In this case, the landlord did not obtain the tenant's written consent for deductions; therefore, the landlord did not have the legal right to retain the security deposit. Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

I find that the tenancy ended on December 15, 2008 when the tenant vacated the rental unit. Since the tenant mailed the forwarding address to the landlord, it is deemed to be received five days later on February 15, 2009. Therefore, the landlord had until March 2, 2009 to either repay the security deposit to the tenant or make an application for



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dispute resolution. Since the landlord did neither of these two options by March 2, 2009 the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

In light of the above, the tenant has established an entitlement to return of double her security deposit, plus accrued interest on the original amount of the deposit. The tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit (\$220.00 x 2 )	\$ 440.00
Accrued interest on \$220.00	1.11
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 491.11</u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

## Conclusion

The tenant has been provided a Monetary Order in the amount of \$491.11 to serve upon the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 02, 2009.

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Dispute Resolution Officer