



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes    MNSD

### Introduction

The hearing that was due to be held on August 06, 2009 was reconvened to today's date to allow the respondent opportunity to provide evidence. The reconvened hearing dates were sent to the applicant and the respondent.

This hearing dealt with an Application for Dispute Resolution by the Tenant for an Order for the return of the security deposits.

Service of the original hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, and was handed into the landlords' agents' office in person by the tenant on June 27, 2009. At the first hearing the landlords' agent confirmed she had received them but they had been inadvertently filed and she did not have time to prepare any evidence. She requested an adjournment which was granted. No one appeared for the landlord at the reconvened hearing held today. The tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

This is a request for the return of the tenants' security deposits. If the tenant is entitled to this, is he also entitled to have this sum doubled pursuant to section 38(6)(b) of the *Residential Tenancy Act (Act)*.

### Background and Evidence

This tenancy started on April 28, 2009. This was a fixed term tenancy for six months. Rent for this unit was \$795.00 per month which was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$447.50 and a laundry deposit of \$175.00 on or about April 28, 2009.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenant gave his testimony and stated that he shared this unit with his girlfriend and a roommate. His roommate had to move away as he had been accepted at a school in the Interior and the tenant and his girlfriend had separated. The tenant testifies that he approached the landlord who agreed that they could end the tenancy early if he found someone else to rent the unit. The tenant met with the landlords' agent and the cleaning lady for the complex. It was then agreed that the cleaning lady would take over the lease of the unit and the tenants agreed to move out on May 31, 2009.

On May 31, 2009 the tenant cleaned the unit and a move out condition inspection was completed with the landlords' agent who commented on how clean the unit was. The tenant gave the landlords' agent his forwarding address in writing on that day. The tenant did not receive his damage deposit or laundry deposit back and contacted the landlord who stated he would look into it. When the tenant also talked to the landlords' agent about it she told him she would not be returning his deposit as he had broken his lease and the laundry deposit would be returned to his girlfriend as she had paid it.

The tenant has provided evidence of his cheque payment for the laundry deposit.

## Analysis

The landlord did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I find that the landlord did receive the tenants forwarding address in writing. The *Residential Tenancy Act* s.38 states;

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(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;



# Dispute Resolution Services

Page: 3

## Residential Tenancy Branch Ministry of Housing and Social Development

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find in favour of the tenants claim for the return of his security deposits. The landlord has received the tenants forwarding address and has not returned the security deposit nor filed an application to retain the deposit. I also find that the tenant paid the laundry deposit not his girlfriend as claimed by the landlords' agent. Therefore as stated in s. 38(6)(b) of the Act the tenant is entitled to receive double the original amount back. A Monetary Order has been issued for the amount of **\$1,245.00**

### Conclusion

I HEREBY FIND in favor of the tenants claim for the return of his security deposit. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,245.00**.

The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

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: September 23, 2009.

---

Dispute Resolution Officer