



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for the amount of the security deposit and compensation under Section 38 of the Residential Tenancy Act (the Act) for double the security deposit.

I accept the landlord's evidence that despite the tenant 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 tenant did not participate in the conference call hearing.

During the hearing, the tenant amended their application to reflect a subtraction of \$750 from their original claim on application as this was received subsequent to filing for dispute resolution.

### **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 May 01, 2008 and ended on May 01, 2009. The landlord collected a security deposit of \$750 at the outset of the tenancy. On May 01, 2009 an end of tenancy inspection was conducted by the tenant and landlord, at which time the landlord commented to the tenant that he was "happy" with the condition of the rental unit. In an e-mail dated May 15, 2009 the tenant provided the landlord with their forwarding address. On May 19, 2009 the

landlord replied to the tenant's e-mail – stating that he would, “send the cheque in the mail to the address below”.

Neither the landlord nor tenant has provided any record of an end of tenancy inspection; however, there is no indication given by the landlord in the e-mail dated May 19, 2009 that as a result of the end of tenancy inspection any deductions from the security deposit were warranted or would be made. The e-mail provided as evidence indicates that the landlord's understanding is that he had one month to return the security deposit and would, “fulfill that obligation”.

After receiving the tenant's Notice for Dispute Resolution package, the landlord determined to forward to the tenant a cheque for \$750 on June 16, 2009 – which the tenant received.

### **Analysis**

**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 held a security deposit of **\$750** and was obligated under section 38 to return this amount together with the **\$7.53** in interest which had accrued. The amount which is doubled is the \$750 base amount of the deposit before interest.

The landlord eventually returned \$750. Therefore:

Original security deposit	750.00
Accrued interest	7.53
Double of original security deposit	750.00
Amount returned by landlord	-750.00
<b>Owed by landlord to tenant</b>	<b>\$ 757.53</b>

**I find** that the tenant has established a claim for **\$757.53**.

### **Conclusion**

**I grant** the tenant an order under section 67 for the sum of **\$757.53**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 15, 2009.