



# 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 an Application by the tenant to order the landlord to return the tenants security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 10, 2009. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord failed to collect these and was deemed to be served the hearing documents on July 15, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Did the tenant give his forwarding address to the landlord in writing?
- Is the tenant entitled to recover double his security deposit back?
- Is the tenant entitled to recover his filing fee from the landlord?

## Background and Evidence

This tenancy started on November 01, 2008 and ended on March 31, 2009. Rent for this rental unit was \$730.00 per month and was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$365.00 on October 22, 2008.

The tenant claims that the landlord did not conduct a move in condition inspection report at the outset of the tenancy. At the end of the tenancy the tenant testifies he informed the landlord he was cleaning the unit before he moved out and asked if she wanted to inspect the unit with him. The landlord told the tenant that she was not available. The tenant gave the landlord his forwarding address in writing and left the keys for the rental unit on March 31, 2009.

The tenant testifies the landlord carried out an inspection of the unit approximately two weeks after he moved out. The tenant telephoned the landlord and requested his security deposit back. The landlord told the tenant that there were damages and cleaning required to the unit and therefore he was not getting his security deposit back as he owed the landlord money for these costs. The landlord proceeded to leave a list of the alleged cleaning and damages under the mat at the tenants' new residence. The tenant disputes the items on this list.

## 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;

(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.

The landlord did not complete a move in or move out condition inspection with the tenant and therefore pursuant to section 24 and 36 of the Act the landlord would not be entitled to make a claim to keep all or part of the tenants' security deposit.



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I find in favour of the tenants claim for the return of double his security deposit. The landlord has received the tenants forwarding address and has not returned the security deposit nor filed an application to retain the deposit. Therefore as stated in s.38 of the Act the tenant is entitled to receive double the original amount back.

As the tenant has been successful with his application he is also entitled to recover the cost of filing this application. A Monetary Order has been issued for the following amount:

Double the security deposit	\$730.00
Interest accrued on the original amount	\$1.06
Filing fee	\$50.00
Total amount due to the tenant	<b>\$781.06</b>

## Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$781.06**. 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: October 23, 2009.

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Dispute Resolution Officer