



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for an amount of the security deposit and for compensation under section 38 of the Residential Tenancy Act for double the owed security deposit. The application is also inclusive of a request for recovery of the filing fee and mail registration costs – the later of which is dismissed as non-compensable. Both, the tenant and the landlord were represented in the hearing and each participated in the hearing with their testimony and submissions respecting the application.

The style of cause for this application is hereby amended by consent of the landlord to reflect the lawful name of the landlord.

### **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 February 01, 2002 and ended on June 14, 2009. The landlord collected a security deposit of \$350 at the outset of the tenancy. There was no start of tenancy inspection recorded, and there was no end of tenancy inspection recorded.

The tenant's testimony is that on June 03, 2009 she provided her forwarding address in writing to the landlord to facilitate the return of the security deposit. The landlord testified her concurrence with the tenant's testimony. The tenant testified that after

many attempts to contact the landlord in respect to the return of the security deposit the tenant received the return of \$362 in September 2009.

### 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.

On the preponderance of the evidence I find that in the absence of the tenant's consent to a deduction of the security deposit the landlord failed to repay the entire security deposit with interest, 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: **(emphasis for ease)**

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.**

Therefore, as to the tenant's monetary claim, I find the tenant has established a claim calculated as follows. The landlord was obligated to return to the tenant the security deposit in the amount of **\$350** plus the accrued interest of **\$12.39**. The tenant is

entitled to double the root security deposit in the amount of **\$350**, for a total entitlement of **\$712.39**. I also find the tenant's application has sufficient merit that I grant the tenant recovery of the filing fee in the amount of **\$50**, for a quantum of **\$762.39**. The tenant's entitlement is reduced by the landlord's payment of \$362, leaving a balance owed to the tenant in the amount of **\$400.39**

### **Conclusion**

The tenant is given an Order under section 67 of the Residential Tenancy Act for the sum of **\$400.39**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated November 20, 2009.