



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for double the security deposit and damages or loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenant testified and provided evidence that the tenant served the landlord with notification of this hearing and the tenant's evidence via registered mail sent to the landlord's place of residence. A search of the tracking number showed that the recipient refused to accept the registered mail. Having been satisfied that the registered mail is deemed to be served upon the landlord despite the landlord's refusal to accept the registered mail, I proceeded to hear from the tenant without the landlord present.

### Issues(s) to be Decided

1. Has the tenant established an entitlement to double the security deposit?
2. Has the tenant established an entitlement to compensation for other damages or loss?

### Background and Evidence

Upon review of the documentary evidence provided me and the undisputed testimony of the tenant, I make the following findings. The tenancy commenced April 18, 2009 but the tenant did not move in for a few days later. The tenant paid a \$600.00 security deposit in two instalments with the full \$600.00 security deposit being paid by April 18, 2009. In addition to rent, the tenant was responsible for paying 2/3 of the gas and hydro

bills. The gas and hydro bills were in the tenant's name and the landlord's share of 1/3 was deducted from the tenant's monthly rent. The parties conducted a move-in inspection together and an inspection report was prepared. The tenancy ended August 31, 2009 but the landlord did not request the tenant participate in a move-out inspection. The tenant did not agree to any deductions from the security deposit. The tenant provided the landlord with her forwarding address in writing via registered mail sent to the landlord at her place of residence on September 14, 2009. The tenant provided a tracking number that showed the registered mail was successfully delivered.

In making this application, the tenant is seeking return of double the security deposit, 1/3 of the gas and hydro bills received after the tenant paid rent for August 2009 and recovery of \$30.00 lent to the landlord and not repaid. The tenant explained that the tenant had lent the landlord \$80.00 upon request of the landlord with the promise that it would be repaid in full; however, the landlord only repaid \$50.00 of the amount advanced by the tenant.

During the hearing, I noted that the service address for the landlord that was indicated on the tenancy agreement was different than the service address used by the tenant to serve documents. The tenant explained that the landlord had recorded a different service address for the landlord on the tenancy agreement with the explanation that the landlord did not want Income and Assistance to know she was living at the rental property or collecting rent. The tenant affirmed that the landlord lived in the lower suite of the rental property and not the address identified on the tenancy agreement.

As evidence for the hearing, the tenant provided copies of the tenancy agreement, move-in inspection report, registered mail receipts, utility bills, bank statements, and other communications with the landlord including the September 14, 2009 letter to the landlord requesting the security deposit and hydro and gas bills for August 2009 be paid to her.

### Analysis

Based on the undisputed testimony of the tenant I am satisfied that the landlord was residing in the lower suite of the rental property and not the address listed on the tenancy agreement. Therefore, I find the lower suite of the rental property to be the address at which the landlord carries on business as a landlord and service of documents upon the landlord at the rental property meets the requirements of section 88 and 89 of the Act.

Section 38 of the Act provides for the return of security deposits. Unless the tenant has otherwise extinguished their right to 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. If the requirements of section 38(1) are not met, then the landlord must pay the tenant double the security deposit under section 38(6) of the Act.

I find that the tenant provided the landlord with her forwarding address in writing via registered mail sent September 14, 2009. In accordance with section 90 of the Act, mail is deemed to be received by the recipient five days later. Therefore, I find the landlord received the tenant's forwarding address in writing on September 19, 2009.

I do not find that the tenant extinguished her right to the security deposit and she did not authorize the landlord to retain the security deposit. Since the landlord did not make an application to claim against the security deposit or repay the security deposit within 15 days of September 19, 2009 I find the landlord is obligated to pay the tenant double the security deposit pursuant to section 38(6) of the Act.

Upon review of the hydro bill for August 2009 I find the tenant entitled to recover \$79.84 for hydro (1/3 of \$239.53). I also find the tenant entitled to \$88.15 (1/3 of \$264.46) for gas charges related to August 2009.

With respect to the money loaned to the landlord, I do not find these transactions related to the tenancy relationship or tenancy agreement. Rather, I find it more likely to be an agreement between acquaintances or friends. Such activity is not enforceable or recoverable under the Act and I do not have the authority to make an order with respect to the private loan.

In light of the above, I calculate that the landlord is obligated to pay the tenant the following amounts:

Double security deposit (\$600.00 x 2 )	\$ 1,200.00
1/3 of hydro for August 2009	79.84
1/3 of gas for August 2009	<u>88.15</u>
Monetary Order for tenant	<u>\$ 1,367.99</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 established an entitlement to compensation of \$1,367.99 from the landlord under the Act and has been provided a Monetary Order in that amount 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: January 28, 2010.

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Dispute Resolution Officer