



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Hearing Decision**

### **Dispute Codes:**

MNSD          Monetary Order for the Return of the Security Deposit

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

A representative of the tenant appeared. Despite being served by registered mail sent to the established address for the landlord as shown on a letter from the strata council, the landlord did not appear and the hearing proceeded in the respondent's absence. A copy of the envelope returned by Canada Post showing that the correspondence was refused by the addressee was submitted into evidence as proof of service.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination depends on the following:
  - Did the tenant pay a security deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?
  - Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?

- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address and obtain an order?

The burden of proof regarding the right to retain the security deposit is on the respondent.

### **Background and Evidence**

The tenancy began on March 1, 2008 and a security deposit of \$950.00 was paid. The current rent was \$1,950.00 per month due on the 1st day of each month. A copy of the tenancy Agreement was in evidence. However no address for the landlord was contained in the document. Also submitted into evidence was a copy of the tenant's notice to vacate on February 28, 2010, a copy of the written notice from the tenant with the tenant's forwarding address demanding the return of the security deposit, correspondence from the strata council, a copy of the February 2010 rent cheque stamped by the bank as evidently cashed by the landlord and a letter from the landlord's lawyer to the tenant. The tenant testified that after the tenancy ended on February 28 2010, a written forwarding address was sent on March 22, 2010 by registered mail to the landlord's address shown in correspondence from the strata council and the landlord failed to return the tenant's security deposit. The tenant is seeking the return of double the deposit.

### **Analysis**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. The Act states that the landlord can retain a security deposit if the tenant gave written permission at the end of the tenancy. In the absence of written permission signed by the tenant, then the landlord's right to merely keep the deposit does not exist under the Act.

In fact, a landlord may retain the deposit to satisfy a liability or obligation of the tenant only if the landlord has made an application for dispute resolution and successfully obtains an order retain the amount. However, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received,

which ever is later. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

I note that the tenancy agreement did not show the name and address of the landlord and was not signed by the landlord. Section 13(2) of the Act states that a tenancy agreement must comply with any requirements prescribed in the regulations and in addition to other terms, must set out the correct legal names of both the landlord and the tenant, the official address for service and a telephone number of the landlord or the landlord's agent.

Given the landlord's failure to provide a service address on the tenancy agreement as required by the Act, I accept that the tenant sent a written forwarding address to a valid address for the landlord as it was shown on a letter from the strata council. I find that this was mailed on March 22, 2010 and deemed to be served in five days.

Section 38(6) provides that , if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,950.00 representing double the deposit of 950.00 and the \$50.00 cost of the application and I hereby issue a monetary order for this amount. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

August 2010

Date of Decision

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Dispute Resolution Officer