

## **Decision**

**Dispute Codes:** MNSD

### **Introduction**

This hearing dealt with an application by the tenant for the double return of the security deposit. The tenant attended the face-to-face hearing and gave affirmed testimony.

The application for dispute resolution and notice of hearing (“hearing package”) were sent to the landlord by way of registered mail. Even while the hearing package was returned to the tenant, and the landlord did not attend the hearing, pursuant to sections 89 and 90 of the Act, the hearing package is deemed to have been received by the landlord.

### **Issue to be decided**

- Whether the tenant is entitled to the double return of the security deposit

### **Background and Evidence**

There is no copy of a written tenancy agreement in evidence for this tenancy which began on or around September 1, 2009. Rent in the amount of \$980.00 was payable in advance on the first day of each month. A security deposit of \$980.00 was collected near the outset of tenancy. The tenant testified that the ministry paid half of this amount to the landlord, and that the landlord later collected the other half in cash from the tenant. The tenant testified that he did not know at the time that the amount of a security deposit that may lawfully be collected is limited to half the monthly rent. A move-in condition inspection report was not completed.

The tenant states that he paid rent to the end of January 2010, but vacated the unit on January 16, 2010. While the tenant completed a walk-through of the unit on that day

with the landlord and returned the unit keys, a move-out condition inspection report was not completed.

Thereafter, the tenant said he attempted unsuccessfully by way of telephone to reach the landlord and arrange for the return of his security deposit. Finally, by letter dated April 14, 2010, and sent by registered mail, the tenant informed the landlord of his forwarding address and requested the return of his security deposit. The tenant's evidence includes a copy of Canada Post's tracking results which show that the tenant's letter was "successfully delivered." Despite this, the tenant testified that the landlord did not contact him and has not returned the security deposit.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 38 of the Act addresses **Return of the security deposit and pet damage deposit**, and provides in part as follows:

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.

Further, section 38(6) of the Act provides:

38(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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenant paid a security deposit in the total amount of \$980.00. I further find that as the landlord failed to comply with the above statutory provisions, the tenant has established entitlement to the double return of the security deposit in the amount of \$1,960.00 (2 x \$980.00).

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,986.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: September 28, 2010

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Dispute Resolution Officer