



# 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 Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenants only. The landlord did not attend.

The tenant's provided a written summary showing that since they did not have the landlord's address they served her with notice of hearing documents to her workplace on June 8, 2010 and that these were returned unopened.

On August 24, 2010 the tenant's forwarded the notice of hearing documents via registered mail to the landlord's address. The tenant's indicate the landlord provided her address when she wrote it as a return address on an envelope she used to send the tenants a portion of their security deposit. The tenants note they received this package back in the first week in September 2010 marked "refused to receive".

Section 89 of the Residential Tenancy Act (Act) stipulates that an application for dispute resolution filed by one party must be served on the other party in a number of ways that includes by sending a copy by registered mail to the address at which the person resides. Section 90 goes on to say that if the document is served in accordance with section 89 by mail it is deemed to be received on the 5<sup>th</sup> day after it is mailed.

I accept the landlord has been sufficiently served and in accordance with the *Act*.

Part of the tenant's claim is for return of a \$50.00 move out fee that the tenant's confirmed at the start of the hearing they had received by way of a cheque dated August 30, 2010. As such, I have amended the tenant's application to exclude this matter.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began in September 2009 as a fixed term tenancy due to end on May 31, 2010 with a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of the month with a security deposit of \$675.00 paid. The tenancy ended on March 11, 2010.

The tenants provided into evidence the following documents:

- A summary of events regarding the return of the security deposit;
- Email correspondence between the parties dating from March 11, 2010 to May 27, 2010. The correspondence primarily relates to having the landlord provide a copy of the move out inspection report and the return of the security deposit;
- A copy of a letter dated August 31, 2010 from the landlord outlining why the landlord kept some of the security deposit, including a receipt for cleaning in the amount of \$275.00 dated March 28, 2010;
- A copy of an envelope from the landlord, with her return address stamped on it, to the tenants; and
- A copy of a cheque in the amount of \$400.00 dated August 30, 2010 noting "Security deposit unit 1408".

The tenants confirm that they provided the landlord with their forwarding address in an email dated March 19, 2010. A copy of this email is included in the tenant's evidence.

### Analysis

Section 38(1) of the *Act* states a landlord must, within 15 days of the end of the tenancy and the receipt of the tenant's forwarding address in writing, return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution with the Residential Tenancy Branch to claim against the security deposit.

Section 38(6) states that if the landlord does not comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

As the landlord did not file an Application for Dispute Resolution before April 2, 2010 I find the landlord has failed to comply with Section 38(1) and must therefore pay the tenant's double the amount of the security deposit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,350.00** comprised of double the amount of the security deposit.

I order the landlord may deduct the \$400.00 paid to the tenants on August 30, 2010 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$950.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced 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 20, 2010.

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Dispute Resolution Officer