



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38.

Both, the tenant and the landlord were represented at today's hearing

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

Is the tenant entitled to double the security deposit amount claimed?

### **Preliminary matters**

I am satisfied that the landlord mailed the tenant's evidence to a forwarding address provided by the tenant and that the tenant is therefore deemed to have received it 5 days later. The tenant informed the hearing that she subsequently moved but did not notify the landlord or the Residential Tenancy Branch of her new address.

### **Background and Evidence**

The undisputed facts before me are as follows.

The tenancy began on December 31, 2009 and ended on March 31, 2010. The parties conducted a move out inspection on March 28, 2010 and recorded such. The parties agreed that certain deductions would be held back by the landlord and that the balance would be returned to the tenant. The following is disputed.

The tenant claims that a forwarding address was provided to the landlord on the day of the move out inspection on March 28, 2010. The landlord provided the move out inspection form which has a space for the forwarding address, and that it is blank. The landlord claims that they received the tenant's forwarding address on April 21, 2010 by e-mail. The landlord provided a copy of an e-mail by the tenant to the landlord dated April 20, 2010 stating she would provide the landlord with an e-mail address on the following day. On April 21, 2010 the landlord was in possession of the forwarding address and determined to send the tenant a cheque for more than what the parties had agreed the tenant would receive. The tenant testified that she received the cheque on April 28, 2010 and the landlord concurred that she dated a cheque April 20, 2010 and sent it soon thereafter.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

The tenant has not supported their claim that they provided a forwarding address on March 28, 2010. Therefore, I prefer the evidence of the landlord that they received the tenant's forwarding address some time later on April 21, 2010.

**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.

I find that the landlord sent the tenant a cheque for the balance of the security deposit as agreed by the parties within 15 days of receiving the tenant's forwarding address by e-mail. In this matter, e-mail is a primary mode of communication by the parties and therefore I accept that *by e-mail* is the same as *in writing*. Therefore, I find the landlord is not liable under the provisions of section 38(6) which provides:

- 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.

The landlord originally held the security deposit of \$450 and was obligated under section 38 to return this amount, minus any amount to which the parties agreed. The landlord retained less than the amount agreed and returned the balance to the tenant as prescribed. As a result the tenant's application is hereby **dismissed**, without leave to reapply.

### **Conclusion**

The tenant's application is **dismissed**, without leave to reapply.

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*.