



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC RPP FF

### Preliminary Issue

At the onset of the hearing the Landlord advised his correct surname as being different than that what was listed on the application for dispute resolution.

The Tenant confirmed that she was never given the Landlord's full name and that she had only dealt with the Landlord's wife. The Tenant requested that her application be amended to include the Landlord's correct last name. In the absence of an objection from the Landlord I grant the Tenant's request to amend the Landlord's surname on her application for dispute resolution.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit, to Order the Landlord to return her personal property, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally on June 19, 2010 at the Landlord's residence. The Landlord confirmed receipt of the hearing documents.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

1. Is the Tenant entitled to a monetary order for the return of her security deposit?
2. Is the Tenant entitled to an Order to have the Landlord return her personal property?

### Background and Evidence

The Landlord confirmed receipt of the Tenant's photographic evidence and confirmed that he did not send copies of his evidence to the Tenant. The Tenant confirmed that she has not received any documents from the Landlord.

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement. Rent was payable on the first of each month in the amount of \$950.00 and the Tenant paid a security deposit of \$400.00 on April 20, 2010. No move-in or move-out inspection reports were completed. The Tenant stated that she thought the tenancy was effective May 1, 2010 while the Landlord stated it began on April 28, 2010 when the Tenant moved in while he was out of town. The Tenant stated she vacated the unit May 30, 2010 while the Landlord stated she did not vacate until May 31, 2010.

The Tenant testified that she provided her forwarding address, in writing, to the Landlord and his wife one week after she vacated the unit. She advised that she was told that her missing documents were mailed to the rental unit address so she suspects the Landlord has these documents in his possession as the mail would have been received after she moved out.

The Landlord confirmed that he received the Tenant's forwarding address, in writing, when she came to his residence about two weeks after the end of the tenancy and gave him the paper. He confirmed that he has not made an application for dispute resolution to keep the security deposit, he does not possess an Order authorizing him to retain the security deposit, and he does not have the Tenant's written permission to keep the security deposit. The Landlord stated that they do not have any of the Tenant's mail and that since the end of the tenancy only one piece of mail was received which he redirected by writing her forwarding address on the envelope and re-mailing it.

In closing the Tenant provided her new mailing address.

### Analysis

The Landlord confirmed that he did not provide the Tenant with copies of his evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Tenant has not been served with copies of the Landlord's evidence I find that

the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

In the presence of opposing testimony I find there is insufficient evidence to support that the Landlord possesses any of the Tenant's mail that may have been received at the rental unit after the tenancy ended. Therefore I dismiss the Tenant's request for an Order to have the Landlord return her personal property.

The Landlord has admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the deposit, and he does not have the Tenant's written consent to retain the security deposit.

The evidence supports that the tenancy ended May 30<sup>th</sup> or May 31, 2010 and the Tenant provided the Landlord with her forwarding address on approximately June 7, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 22, 2010. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Security Deposit 2 x \$400.00	\$800.00
Interest owed on the Security Deposit of \$400.00	0.00
Filing Fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$850.00</b>

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$850.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: November 03, 2010.

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Dispute Resolution Officer