



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of her security deposit.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

Service of the hearing documents, by the Tenant to the Landlord, was done by leaving a copy with the Landlord's wife, who lives with him. The Tenant stated that she delivered the hearing documents on August 26, 2010, and the Landlord testifying that he received them later in the month of August, but was not certain of the date. I accept the Tenant's testimony that the documents were delivered on August 26, 2010.

I acknowledge that the Tenant did not serve the hearing documents pursuant to section 89(1)(a) by leaving a copy with the person (Landlord), but under the principles of natural justice and section 71 (2) (c), I deem the documents were sufficiently served for the purpose of this hearing. I further find that the outcome of this hearing would not have change had the documents been served on the Landlord instead of his wife, in lieu of the Landlord's appearance.

### Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

This tenancy began on July 24, 2006, and ended on July 24, 2010. A security deposit of \$500.00 was paid on July 24, 2006.

The Tenant supplied evidence and gave affirmed testimony that the Landlord was provided the Tenant's written forwarding address when the Landlord received the hearing documents. The Tenant and her witness further testified that her forwarding address was also known to the Landlord on July 24, 2010, when the Tenant reminded him that her forwarding address had not changed from the address originally provided in the tenancy agreement.

The Tenant stated that there was no move in or move out inspection or written report and the Landlord said that there probably was one, but could not provide any specific dates or information about the same.

The Landlord testified that he misunderstood the language about the written forwarding address provision, but acknowledged he had not returned the security deposit to the Tenant.

The Landlord has not filed for Dispute Resolution.

### Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

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 this case the evidence and testimony supports that the Tenant provided the Landlord with her forwarding address on July 24, 2010 and again on August 26, 2010 through receipt of the copy of the Application for Dispute Resolution.

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenant's written consent to retain the security deposit.

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.

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 her security deposit.

I find that the Tenant has succeeded with her application therefore, under section 67 of the *Act*, 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 owed 2 x \$500.00	\$1,000.00
Filing Fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,066.26</b>

Pursuant to the policy guideline, I have provided the Tenant with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant is granted a monetary order for **\$1,066.26**.

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 17, 2010.

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Dispute Resolution Officer