



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

Each party submitted evidence that appeared to relate to a claim for damage to the rental unit. As this application was made by the tenant in relation to return of the deposit, I did not review the evidence submissions and referenced only the copy of the tenancy agreement, which each party confirmed they had before them during the hearing.

The landlord believed that her evidence submission provided her with the opportunity to submit a claim against the deposit. As the landlord had not submitted an application or served the tenant with notice of a hearing, I explained that any claim the landlord wishes to make could not be heard as part of the tenant's application.

The parties were provided with an opportunity to settle the matter; however, there was no agreement to proceed with settlement discussions.

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on January 1, 2010, rent was \$1,000.00 per month due on the first day of each month. A deposit in the sum of \$500.00 was paid on January 1, 2010. A move-in condition inspection report was not completed.

The tenant vacated the rental unit on June 30, 2010. A move-out condition inspection occurred; however, the details of that inspection and damages are in dispute.

The tenant received \$301.54 of the deposit, sent to her mother's forwarding address that had been given at the start of the tenancy.

The tenant did not provide the landlord with a written forwarding address at the end of the tenancy. The agent stated the landlord was told to use the mother's address; the landlord stated that she returned the deposit to the mother's address as it was the only one she had.

The tenancy agreement included an addendum, clause 14, that allowed deductions from the deposit should there be damages at the end of the tenancy. The landlord believed the tenant had agreed to allow deductions from the deposit.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute in relation to damages that is not part of the application before me.

A move-out condition inspection was completed; however, the events that occurred in relation to that inspection are in dispute.

The landlord did return \$301.54 to the tenant, received by the tenant on July 12, 2010.

I have considered the testimony of both parties and have determined that the tenant did not supply the landlord with her written forwarding address at the end of the tenancy. The landlord operated on an assumption that the portion of the deposit sent to the tenant's mother would eventually find its way to the tenant.

Section 38(1) of the Act provides:

**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.*

I find, based on the testimony during the hearing that the tenant did not supply the landlord with a written forwarding address at the end of the tenancy. It is not reasonable to expect the landlord to use an address that was given at the start of the tenancy; the landlord used that address as she understood it belonged to the tenant's mother, however; this address was not given in writing at the end of the tenancy.

Therefore, I find, allowing for service of this decision by mail, that effective December 21, 2010, the landlord will be deemed served with the tenant's forwarding address, as contained in the tenant's application. The tenant's agent understood that the application address was confirmed during the hearing as the service address provided by the tenant. The landlord confirmed she was in possession of the application which contained the tenant's address.

The landlord will have until January 5, 2011, in which to comply with section 38 of the Act; by either returning the balance of the deposit owed, \$198.46, or by submitting a claim against the deposit; as provided by section 38 of the Act.

If the landlord fails to comply with section 38 of the Act by January 5, 2010, the tenant is at liberty to submit a further application in relation to the deposit.

I have found that this application was premature, as a forwarding address was not provided in writing at the end of the tenancy; therefore, I decline filing fee costs to the tenant.

### Conclusion

The parties will be deemed to have received this decision on December 21, 2010.

The landlord will have 15 days from December 21, 2010, to comply with section 38 of the Act; by either returning the balance of the deposit to the tenant or submitting a claim against the deposit.

The tenant is at liberty to submit an application in relation to the deposit any time after January 5, 2011.

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: December 16, 2010.

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Dispute Resolution Officer