



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes MNSD

### Introduction

This is an application by the Tenant for a monetary order for return of the security deposit.

The Tenant served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 9, 2010, and deemed received under the Act five days later. The Landlord did not attend the hearing. I find the Landlord has been duly served in accordance with the Act.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

### Background and Evidence

The Tenant paid a security deposit of \$400.00 on September 29, 2007. The Tenant vacated the premises on February 1, 2010.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to and agreed the Landlord could retain \$92.61 from the security deposit.

The Landlord did not return the balance of the security deposit to the Tenant.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 38 of the Act.

There was no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.



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I find the Landlord has failed to return the balance, or file a claim against the balance of the security deposit, within the required 15 days and therefore, I must order the Landlord to pay the Tenant double of the balance of the deposit due, pursuant to section 38 of the Act.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep the balance of the security deposit.

## Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$622.37**, comprised of \$7.59 for the interest on the original amount held and double the balance of \$307.39 (\$614.78).

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: January 04, 2011.

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Residential Tenancy Branch