



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit 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 sent via registered mail on September 7, 2010. The Landlord confirmed receipt of the hearing documents and a copy of the Tenant's evidence.

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

The Tenant testified that she sent copies of her evidence to the *Residential Tenancy Branch* at an address where there is no *Residential Tenancy Branch* office. We proceed with hearing the Tenant's application after I explained that I would accept her testimony in relation to her evidence.

### Issue(s) to be Decided

1. Has the Landlord breached the Act, regulation, or tenancy agreement?
2. If so, has the Tenant proven entitlement to a monetary claim as a result of that breach?

### Background and Evidence

The Tenant testified that she took over the lease from a former tenant on June 1, 2009 and then later testified that, the landlord at the time, entered into a new written tenancy agreement with her effective June 1, 2009 for a fixed term that switched to a month to month tenancy after November 30, 2009. Rent was payable on the first of each month in the amount of \$1,496.00 and the Tenant paid \$700.00 for a security deposit towards



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the end of May 2009. She vacated the unit on July 31, 2010. A move-in inspection report was not completed when she took over the rental unit.

The Tenant advised she did not attend a move out inspection and did not sign the document. She requested her roommate attend and neither of them were given a copy of the report until she made several requests to get a copy. She finally received a copy of the report via e-mail on August 25, 2010.

She is seeking double her security deposit (\$725.00 x 2) less \$425.39 she received as partial reimbursement plus the \$50.00 filing fee. She argued that she did not agree to any deductions from her security deposit.

The Landlord testified her company took over management of the property April 12, 2010 and based on the records transferred from the previous landlord the move-in inspection report was completed with the previous tenant March 1, 2007. Their records also indicate the Tenant paid only \$697.39 as a security deposit however would consider that amount to be \$700.00 as indicated by the Tenant's testimony. She confirmed that they do not have the Tenant's written permission to withhold a portion of the security, they did not make application for dispute resolution, and they do not possess an Order issued by the *Residential Tenancy Branch* giving them authority to retain any portion of the security deposit. A cheque was issued to the Tenant on August 10, 2010 in the amount of \$425.39 which represents the balance due to the Tenant after deductions for cleaning, carpet cleaning, and repairs to the window blinds we calculated.

The Tenant and her Agent argued the Landlord was not entitled to retain any portion of her security deposit because they failed to conduct a move-in inspection report with her. They also questioned why the move-out inspection report was not signed and has a date stamp of August 24, 2010. They questioned if the form had been altered after the inspection was conducted.

The Resident Manager testified the Tenant's roommate attended the move-out inspection and his signature is on the bottom left hand corner of the report. She confirmed that the deduction calculation was not added to the move-out inspection form until August 24, 2010, after the move out inspection was conducted and signed by the Tenant's roommate on July 31, 2010.

## Analysis

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.

The Tenant provided testimony that she had paid a security deposit in the amount of \$700.00 at the end of May 2009; however the Tenant indicates in her application that she paid \$725.00 towards her security deposit. The Landlord's records indicate the previous landlord received \$697.39 from the Tenant as her deposit. In the absence of documentary evidence to support the exact date and amount of deposit paid, after careful consideration of the testimony I find based on the balance of probabilities the Tenant paid a security deposit of \$700.00 on approximately May 31, 2009.

The Landlord issued the Tenant a partial reimbursement of her security deposit on August 10, 2010, in the amount of \$425.39 all of which were received by the Tenant prior to the date the Tenant filed her application for dispute resolution. A balance of \$274.61 (\$700.00 – 425.39) was retained by the Landlords.

A Tenant may have an agent represent them at the move-out inspection. Such an agent would have authority to sign the move-out inspection and approve deductions on behalf of a tenant. In this case the Resident Manager confirmed that she altered the move-out inspection form after it was completed and signed by the Tenant's agent. Therefore I find the Landlord did not have the agent's written permission to make deductions to the Tenant's security deposit.

The Landlord has confirmed that they did not apply for dispute resolution to keep a portion of the security deposit, they do not have an Order allowing them to keep the \$274.61 and they do not have the Tenant's written consent to retain \$274.61 of the security deposit.

The evidence supports that the Tenant provided the Landlords with her forwarding address on July 17, 2010 and the tenancy ended July 31, 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 August 15, 2010.

Based on the above, I find that the Landlord has partially complied with Section 38(1) when they disbursed \$425.39 of the security deposit on August 10, 2010. That being said, the Landlord failed to comply with Section 38(1) of the *Act* by withholding \$274.61. Therefore 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. Based on the aforementioned I find that the Tenant has succeeded in proving her claim for the return of double the balance owed of 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 Balance owed on Security Deposit 2 x \$274.61	\$549.22
Filing Fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$599.22</b>

## Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$599.22**. 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: January 05, 2011.

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Residential Tenancy Branch