



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD

### Introduction

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

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing documents.

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.

### Issues(s) to be Decided

1. Has the Landlord breached the *Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof for a monetary claim as a result of that breach?

### Background and Evidence

The parties confirmed they entered into a written month to month tenancy effective July 1, 2009. Rent was payable on the first of each month in the amount of \$690.00 and \$345.00 was paid by the Tenant for the security deposit on June 22, 2009. A move-in inspection report was completed on June 22, 2009. The tenancy ended April 29, 2010 after the Tenant provided written notice to end on March 31, 2010 which included her forwarding address. The Landlord returned \$6.75 of the security deposit to the Tenant on May 9, 2010.

The Tenant stated that when she left on April 29, 2010 she told the Landlord she would try to attend the move out inspection on April 30, 2010. She called the Landlord the

morning of April 30, 2010 to advise she was not well and could not attend and the Landlord told her that was okay she would go in herself and check the unit. The Landlord called her later that day to say everything was fine except the carpet required cleaning.

The Landlord confirmed the Tenant did not attend the move out inspection. She states she gave the Tenant an opportunity to attend a two times and she later issued the Tenant a final notice of inspection. She did not provide a copy of the final notice in her evidence. The Landlord confirmed that they did not apply for dispute resolution to obtain an Order allowing them to retain a portion of the security deposit; they do not possess an Order authorizing the Landlords to retain money from the security deposit, and the Landlords do not have the Tenant's permission, in writing, to keep a portion of the security deposit.

The Tenant stated that she was never issued two times to attend nor was she given a written final notice to attend an inspection.

### Analysis

All of the testimony and documentary evidence was carefully considered.

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.

In this case the Landlords issued the Tenant a partial refund of \$6.75 on May 9, 2010. The Landlord has admitted that they did not apply for dispute resolution to keep \$338.25 of the security deposit, they do not have an Order allowing them to keep it, and they do not have the Tenant's written consent to retain any portion of the security deposit.

The evidence supports that the Tenant provided the Landlord with her forwarding address on March 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 Landlords were required to return the Tenant's security deposit in **full** or file for dispute resolution no later than May 15, 2010.

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 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 the test for damage or loss as listed above and I approve her claim for the return of double the balance owed of her security deposit plus interest.

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

Doubled Balance owed on Security Deposit (\$345.00 – 6.75) = 2 x \$338.25	\$676.50
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$676.50</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 **\$676.50**. 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 20, 2011.

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Residential Tenancy Branch