



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for the return of double the amount of the security deposit, and to recover the filing fees associated with this application.

The tenant participated in the hearing and provided affirmed testimony. She testified that she served the Notice of Dispute Resolution to the landlord by way of registered mail on September 8<sup>th</sup>, 2010. The landlord did not participate and the hearing proceeded in the landlord's absence.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

### Background and Evidence

The rental unit consists of a basement suite in a detached home located in Surrey. Pursuant to a written agreement, the month to month based tenancy started on January 1<sup>st</sup>, 2010 and ended on March 10<sup>th</sup>, 2010, at a rate of \$700.00 payable on the first of each month. The tenant paid a security deposit in the amount of \$350.00. The tenant testified that the landlord never provided her with a copy of the agreement.

The tenant also testified that on February 1<sup>st</sup>, 2010, she gave the landlord notice to end the tenancy. The tenant submitted a copy of a March 30<sup>th</sup>, 2010 letter to the landlord which provided the landlord with a forwarding address. A move-out condition report was completed with the landlord on March 13<sup>th</sup>, 2010.

The tenant said that although she never was provided with a copy of that report, the landlord said to come back on March 24<sup>th</sup> for the return of the security deposit. The tenant said that she made several attempts to meet with the landlord since that date, but that the landlord is always either away or unavailable, and that he never returned any of the tenant's phone messages. The tenant submitted as evidence the original envelope containing the Notice of Dispute Resolution Hearing sent by registered mail at the landlord's residence on September 8<sup>th</sup>, 2010. The letter was returned to the tenant as "RTS" (Return to Sender).

## Analysis

I accept the tenant's undisputed testimony that she served the landlord with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the landlord ought to have had knowledge of the date scheduled for this hearing.

Section 38(1) of the *Residential Tenancy Act* states:

- *"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.*



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Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

The landlord did not make an application for dispute resolution. Based on the available evidence, I am satisfied that the tenant has established a claim for the return of double the amount of the security deposit.

## Conclusion

Pursuant to Section 67 of the Act, I award the tenant a claim for \$700.00. Since the tenant was successful, I also award the tenant the recovery of the \$50.00 filing fee for a monetary claim totalling \$750.00.

This Order may be registered in the Small Claims 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 13, 2011.

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Residential Tenancy Branch