



# 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 was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided a tracking number for the registered mail purportedly sent on October 20, 2010.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Is the tenant entitled to double the security deposit amount claimed?

### **Background and Evidence**

The undisputed facts before me are as follows.

The tenancy began on November 01, 2008 and ended on July 31, 2010. The landlord collected a security deposit of \$625 at the outset of the tenancy. There was no move in inspection conducted at the outset. There was no move out inspection conducted and recorded at the end of the tenancy, and the tenant did not receive the results of a move out inspection report after they vacated. The tenant claims the landlord's agent walked through the rental unit and took some pictures - giving no indication of any issues

associated with the rental unit. The landlord purportedly was to provide the tenant with a list of deficiencies, but the tenant has not received any such communication to date. The tenant provided evidence that they sent the landlord their forwarding address on August 20<sup>th</sup>, 2010. Their evidence included the mail tracking information in respect to the written forwarding address showing that the registered mail was received August 23, 2010.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

**Section 38(1)** of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I accept that the landlord was sent the tenant's forwarding address and that according to Section 90 of the Act, the landlord is deemed to have received it no later than August 26, 2010. I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$625 and was obligated under section 38 to return this amount together with the \$1.56 in interest which had accrued. The amount which is doubled is the \$625 original amount of the deposit before interest. As a result I find the tenant has established an entitlement claim for **\$1251.56** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1301.56**.

### **Conclusion**

I grant the tenant an order under section 67 for the sum of **\$1301.56**. If necessary, this order may be filed 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*.