



# 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 the tenant's application for a Monetary Order for return of double the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party in accordance with the Rules of Procedure. I determined the landlord had submitted evidence to the Residential Tenancy Branch that was served upon the tenant and I did not accept or consider that evidence. However, the landlord was provided the opportunity to verbally make her submissions.

### Issue(s) to be Decided

Has the tenant established an entitlement to return of double the security deposit?

### Background and Evidence

I heard the following undisputed evidence from the parties. The parties entered into a tenancy agreement and the tenant paid a \$237.50 security deposit on September 18, 2009. The tenant vacated the rental unit August 31, 2010 and both parties participated in a move-out inspection on September 9, 2010. The tenant provided her forwarding address in writing to the landlord on September 9, 2010. The tenant did not authorize the landlord to make any deductions from the security deposit and indicated she did not agree with the landlord's assessment of the condition of the rental unit on the move-out inspection report.

The tenant is seeking recover of double the security deposit as the landlord did not refund the security deposit within 15 days of providing the landlord with a forwarding address in writing.

The landlord submitted that the tenant damaged the rental unit with cigarette smoke. The landlord sent the tenant a registered letter dated September 30, 2010 in an attempt

to illicit a response from the tenant but the tenant did not respond. The tenant confirmed receiving the landlord's letter.

I determined that as at the date of this hearing the landlord has not refunded the security deposit or made an Application for Dispute Resolution.

Documentary evidence provided to me for this hearing included a copy of the tenancy agreement, condition inspection report, receipt for security deposit and emails between the parties in October and November 2009 concerning the move-in inspection report.

### Analysis

As the parties were informed during the hearing, the landlord's submissions regarding damage to the rental unit were not issues for me to decide for this proceeding as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's application and determine whether the landlord complied with the Act with respect to handling of the security deposit. The landlord remains at liberty to make a separate application for damages within two years of the tenancy ending.

Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

Deductions from the security deposit may be made by the landlord in limited circumstances as provided by the sections 38(3), 38(4) and 38(5) of Act. Having heard from the parties, I do not find the landlord had the right to withhold or make any deductions from the security deposit and I do not find the tenant extinguished her right to return of the security deposit.

Since the tenant provided her forwarding address in writing to the landlord on September 9, 2010 the landlord had until September 24, 2010 to refund the deposit or make an Application for Dispute Resolution to avoid the application of section 38(6) of the Act. I find the landlord failed to meet the landlord's obligations under section 38(1) of the Act and must now pay the tenant double the security deposit.

The tenant is awarded \$475.00 with this decision and is provided a Monetary Order in that amount to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) an Order of that court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$475.00 to serve upon the landlord.

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: February 03, 2011.

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Residential Tenancy Branch