



# 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 double the balance of the security deposit.

The tenant served the landlord by registered mail on October 22, 2010 with a Notice of Hearing however failed to provide a copy of the Application. The landlord later obtained this from the Residential tenancy Office and the tenant sent a copy of the application with his evidence package. As the landlord has now received all the tenants application he states he is willing to proceed with the hearing today.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, and make submissions to me. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to receive double the balance of the security deposit?

### Background and Evidence

Both parties agree that this tenancy started on August 05, 2010. This was a short term fixed term tenancy due to expire on September 30, 2010. Rent for this unit was \$2,500.00 per month and was due on the first of each month. The tenant paid a security deposit of \$1,000.00 on July 22, 2010. It was agreed the tenant could sublet the rental unit and his tenants moved from the unit at the end of the fixed term.

Within the landlord and the tenant evidence there is e-mail correspondence which confirms that landlord acknowledging he has the tenants' current address. This e-mail is dated October 01, 2010. The tenant submits he did receive a bank draft from the landlord dated October 13, 2010 for \$700.00. The landlord also provided a brake down of the deductions made from the security deposit which includes cleaning costs for linen, cleaning/shampooing rugs and bedroom carpet, re-caulking the bathtub and cleaning the fridge top, stove top and appliances.

The tenant submits that he did not authorise the landlords to make these deductions and disputes the landlords claim as to why they made the deductions as an e-mail from the landlord states that the unit ostensibly looks clean. The tenant states the landlord did not complete a move in or move out condition inspection report at the beginning or end of the tenancy.

The landlord agrees he did not complete the move in or move out inspections but states when he went to the property at the end of the tenancy he found the tenants residing there had not cleaned the unit, had not cleaned the linen (as it was a furnished unit) and had stained the carpet and left the rugs and carpet unclean. The landlord states he deducted \$300.00 from the security deposit and returned the remainder to the tenant within 15 days of the end of the tenancy.

The tenant seeks to recover double the outstanding balance of his security deposit as it was not returned to him within 15 days of the end of the tenancy and the landlord agreed he had the tenants' current address.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

Based on the above and the evidence presented I find that the landlord did have the tenants current address as he did not reside in the unit at least by October 01, 2010. As a result, the landlord had 15 days from the end of the tenancy (October 15, 2010) to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. The landlord only returned \$700.00 from the security deposit and withheld \$300.00 without the tenants' authorization or an Order from a Dispute Resolution Officer.

The landlord also agrees that he did not conduct either a move in or move out condition inspection report at the beginning or end of the tenancy. Therefore, I find that the tenant has established a claim for the return of double the outstanding balance of the security deposit to the sum of **\$600.00** pursuant to section 38(6)(b) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$600.00**. The order must be served on the respondent 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: February 23, 2011.

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Residential Tenancy Branch