

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double a portion of the security deposit. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that she received the tenant's November 18, 2010 mailing of a copy of the dispute resolution hearing package by registered mail. I am satisfied that the tenant served this package to the landlord and the evidence in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary Order for double a \$475.00 portion of the tenant's security deposit?

### Background and Evidence

This one-year fixed term tenancy commenced on April 26, 2009. The tenancy continued until October 5, 2010 when the tenant vacated the rental unit. Monthly rent during this tenancy was set at \$1,400.00, payable on the first of each month. The landlord said that she continues to hold the tenant's \$700.00 security deposit paid on May 1, 2009. The parties confirmed that they had an agreement whereby the landlord would retain \$225.00 of the tenant's security deposit as overholding rent for the first 5 days of October 2010 in lieu of rent for that period.

The tenant's wife who attended the hearing on the tenant's behalf (the tenant) provided oral and written evidence that the tenant provided the landlord with written notice of a forwarding address whereby the remaining \$475.00 portion of the security deposit could be returned on October 19, 2010. The landlord did not dispute the tenant's claim that the forwarding address was provided to the landlord on that date.

The tenant requested a monetary Order of double the remaining security deposit (i.e., \$700.00 - \$225.00 = \$475.00) for the landlord's failure to return the remaining portion of the security deposit to the tenant within 15 days of receiving their forwarding address in writing. The tenant applied for a monetary Order of \$950.00.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an

Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must pay the tenant double the amount of the remaining portion of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address.

The parties are in agreement that the landlord neither applied for dispute resolution nor did she return the remaining portion of the security deposit within 15 days of the landlord receiving the tenant's forwarding address. Pursuant to section 38 of the *Act*, I allow the tenant's application for a monetary Order for double the remaining \$475.00 portion of the security deposit the landlord is retaining plus interest. No interest is payable over this period.

#### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$950.00 for the return of double the landlord's retained portion of the tenant's security deposit.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.