



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was scheduled to deal with the tenant's application for return of double the security deposit and damage or loss under the Act, regulations or tenancy agreement. The tenant did not appear at the hearing. An agent appeared on behalf of the tenant and provided a written consent form signed by the tenant that indicated the agent was authorized to discuss matters pertaining to the dispute resolution hearing scheduled for today.

At the commencement of the hearing the tenant's agent requested an adjournment. The reason given for the adjournment was that the tenant could not reach a witness who would attest to the tenant's need to change the locks. The respondents were not agreeable to an adjournment.

The criteria for granting an adjournment are provided in the Rules of Procedure. Given the tenant made this application on October 22, 2010 and at the date of this hearing was unable to reach her own witness I was not satisfied that the tenant had acted diligently in contacting her witness in a timely manner or that an adjournment would contribute to resolving the matter. Accordingly, I refused to grant the adjournment and informed the parties that this matter would proceed as scheduled.

The tenant's agent proceeded to make submissions on behalf of the tenant. As I was satisfied of service of hearing documents, I also considered the written submissions and evidence submitted by both parties in reaching a decision.

### Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit and interest?
2. Is the tenant entitled to compensation for a missing rake?
3. Is the tenant entitled to compensation for a locksmith?

### Background and Evidence

The tenant had paid a \$725.00 security deposit. The tenancy ended May 31, 2010; however, the tenant remained in possession of the rental unit until August 3, 2010.

The tenant is requesting return of double the security deposit on the basis the landlords have failed to return the security deposit to her within the required time limit. The tenant submitted in writing that a forwarding address was given verbally on August 3, 2010 and by fax on September 9, 2010 and September 30, 2010. The landlords acknowledged receiving the faxes.

The landlords submitted that they sent two cheques to the tenant via registered mail on September 10, 2010. The first cheque was for a \$75.00 monetary award granted to the tenant under a previous dispute resolution proceeding. The second cheque was in the amount of \$698.40 representing the security deposit and interest less a \$50.00 award to the landlord for a previous dispute resolution proceeding. The registered mail was returned to the landlords as unclaimed. The tenant's agent explained that the tenant could not retrieve the registered mail as she did not have the identification required.

The landlords submitted that they sent three cheques to the tenant by regular mail on November 4, 2010 and as of the date of the hearing the cheques remain outstanding. In addition to returning the security deposit and interest and the monetary award of \$75.00 the landlords also sent the tenant a cheque for \$10.00 for a rake. The tenant's agent stated that the tenant likely is in possession of the cheques sent by regular mail.

With respect to the claim for compensation for changing the locks the tenant's agent submitted that the lock was not working properly and the tenant had to hire a locksmith to have a new lock installed. The landlords testified that they were not contacted by the tenant with respect to the lock not working. The tenant's agent was uncertain as to whether the tenant attempted to contact the landlords with respect to the lock not working.

Evidence considered relevant in making this decision includes a copy of the letter faxed to the landlords on September 9, 2010 and September 30, 2010; the registered mail receipt and tracking number for the registered mail sent to the tenant on September 10, 2010; the letter that was included in the September 10, 2010 mailing; duplicates of three cheques dated November 3, 2010 and a postage receipt dated November 4, 2010; email communication between the parties and the tenant's agent; and, the previous

dispute resolution decision authorizing the landlords to deduct \$50.00 from the tenant's security deposit.

### Analysis

Section 38 of the Act provides for the return of security deposits. Section 38(1) requires that a landlord either return the security deposit and interest, less authorized deductions, to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, it is undisputed that the tenant sent a fax containing her forwarding address to the landlords on September 9, 2010. Based upon the evidence before me, I am satisfied the landlords sent the security deposit and interest to the tenant via registered mail to the tenant's forwarding address on September 10, 2010. Since registered mail is an acceptable form of service upon the tenant I find the landlords met their obligation to pay the security deposit and interest to the tenant within 15 days of receiving the tenant's forwarding address. The tenant's request for return of double the security deposit is therefore dismissed without leave to reapply.

Based upon the evidence before me, I am further satisfied the landlords have sent the tenant replacement cheques, including a cheque for a rake, via regular mail on November 4, 2010. Regular mail is also an acceptable form of service. Accordingly, I find the landlords have compensated the tenant for a rake and that portion of the tenant's application is also dismissed without leave to reapply.

With respect to the tenant's claim for compensation for a locksmith I dismiss this portion of the tenant's claim without leave to reapply. In order to establish an entitlement to a repair the tenant must show that the landlords agreed to reimburse the tenant for this expense or that the item was an emergency repair. There are several criteria that must be met in order to establish that an emergency repair was made including two attempts to contact the landlord before making the repair. Based upon the evidence before me, I do not find sufficient evidence that the landlords agreed to reimburse the tenant for the locksmith or that the tenant made at least two attempts to contact the landlords before hiring the locksmith.

Conclusion

The tenant's application has been dismissed in its entirety.

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: March 08, 2011.

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Residential Tenancy Branch