



# 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 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- An Order to return double the security deposit - Section 38
- An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2010. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$325.00. The Tenant participated in a move-in inspection of the unit at the beginning of the tenancy. The Landlord did not complete the inspection report and provide a copy to the Tenant. The tenancy ended on December 1, 2011 and the Tenant provided a forwarding address to the Landlord requesting a return of the security deposit. The Landlord scheduled a

move-out inspection, which the Tenant failed to attend. The Landlord also contacted the Tenant to schedule a second inspection and the Tenant refused. The Landlord did not return the security deposit and did not file an application for dispute resolution claiming against the security deposit. The Landlord indicated in evidence submissions that the tenant did not participate in a move-out inspection and that at the end of the tenancy left the unit unclean. The quantum of the Tenant's monetary claim is **\$650.00**.

### Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 18 of the Residential Tenancy Regulation requires that a copy of the inspection report be provided to the Tenant within 7 days after the condition report is completed. Section 24 of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, a landlord must return a security deposit to the tenant or make an application for dispute resolution claiming against the security deposit. Section 38(2) provides that where a tenant has failed to participate in the move-out inspection, subsection (1) does not apply.

Although a move-in inspection was carried out, the Landlord failed to complete the inspection report and provide the Tenant with a copy of the report. Given this primary failure on the part of the Landlord to fulfill the requirements of the Act in relation to the condition inspection at the start of the tenancy, I find that the Tenant's failure to participate in a move-out inspection is inconsequential. In these circumstances, the Landlord would be required to comply with section 38(1) of the Act and cannot rely on Section 38(2).

Section 38(6) requires that where the landlord has not complied with section 38(1), the landlord must pay the tenant double the amount of the security deposit. As the Landlord did not return the security deposit and did not make an application for dispute resolution within 15 days of the end of tenancy and receipt of the Tenant's forwarding address, I find that the Tenant has established a monetary claim for return of double the security deposit, or \$650.00. The Tenant is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$700.00**.

### Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for the amount of **\$700.00**. 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*.

Dated: April 05, 2011.

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Residential Tenancy Branch