



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served in person. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective December 1, 2009. Rent was payable on the first of each month in the amount of \$600.00 and on approximately November 30, 2009 the Tenant paid \$300.00 to the Landlord for a security deposit. No move-in or move-out inspection reports were completed. The Tenant provided the Landlord with notice to end the tenancy on July 31, 2010, paid the full month's rent for August 2010, and vacated the property on August 7, 2010.

The Tenant's witness testified that he assisted the Tenant in moving out of the rental unit and he saw that the unit was clean and there were no stains on the carpet.

The Tenant testified she provided the Landlord with her forwarding address in writing on October 30, 2010 when she left a letter in his mailbox requesting the return of her security deposit. She left the unit in the same condition she found it in and only moved out because the Landlord changed his mind about whether she could have a dog.

The Landlord testified and confirmed he received the Tenant's letter on October 30, 2010 with her forwarding address. He stated he has not returned the security deposit because of damages to the unit. He has not made an application for dispute resolution to claim the security deposit, he does not possess an Order authorizing him to keep the security deposit, and he does not have the Tenant's written permission to keep the security deposit.

### Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The Landlord confirms he has not applied for dispute resolution to keep the security deposit, he does not have an Order allowing him to keep the security deposit, and he does not have the Tenant's written consent to retain the security deposit.

The evidence supports that the tenancy ended August 7, 2010, pursuant to section 44(1)(d) of the *Act*, and the Tenant provided the Landlord with her forwarding address on October 30, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than November 14, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

Double the Security Deposit 2 x \$300.00	\$600.00
Interest owed on the Security Deposit	0.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$600.00</b>

### Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$600.00**. The order must be served on the respondent Landlord 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: April 04, 2011.

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Residential Tenancy Branch