



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

MNSD FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Although served by registered mail sent on December 1, 2010, the landlord did not appear. The tenant had submitted into evidence a copy of the registered mail sent to the landlord's address, marked "*Unclaimed*". I find that the tenant complied with the Act in properly serving the Notice of Hearing by registered mail.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit paid at the start of the tenancy in September 2005.

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

The burden of proof was on the applicant to prove that the deposit was paid and the burden of proof was on the respondent landlord to prove that the deposit was returned or that the landlord had a right under the Act or by Order to keep it.

### **Background and Evidence**

The tenant testified that the tenancy began in September 2005. The rent was \$750.00 and a security deposit of \$325.00 was paid. The tenant testified that the tenancy ended on October 31, 2010 and the written forwarding address was provided to the landlord on November 4, 2010. A copy of the November 4, 2010, letter and proof of service was in evidence. The tenant testified that the landlord failed to return the security deposit and never made an application for dispute resolution for an order to keep the deposit.

### **Analysis**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant at the end of the tenancy. The tenant testified that this did not occur and I find that the tenant did not give the landlord written permission to keep any part of the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that, under the Act, the tenant is entitled to double the security deposit of \$325.00, which is \$650.00, plus \$11.50 interest. I find that the tenant is also entitled to be reimbursed the \$50.00 paid for this application. Accordingly, I find that the tenant is entitled to a total monetary order for \$711.50..

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$711.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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 2011.

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Residential Tenancy Branch