



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of his security deposit, doubled.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

### Background and Evidence

Although no tenancy agreement was entered into evidence, the unopposed testimony of the parties is that this one year fixed term began on January 1, 2010, and ended either on May 31, 2010, or June 1, 2010, that monthly rent was \$1,175.00, and a security deposit of \$1,175.00 was paid at the beginning of the tenancy.

Upon query, the Landlord testified that he charged and collected double the allowable amount of a security deposit, in breach of Section 19 of the Act, because the parties agreed to it.

The Tenant gave affirmed testimony that he provided the Landlord his written forwarding address in a letter, on July 2, 2010, and the Landlord confirmed receiving it shortly afterwards.

The Landlord acknowledged that he has not filed for Dispute Resolution, nor had the Tenant's written permission to withhold any amount. However, the Landlord stated he believed he was entitled to keep the security deposit for damages.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant bears the burden 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.

The evidence and testimony of the Tenant and the Landlord confirms that the Tenant provided the Landlord with his written forwarding address in a letter sent on July 2, 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. [Emphasis added]

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenant's written consent to retain the security deposit.

Based on the above, I find that the Landlord 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. [Emphasis added]

Under authority of section 72 of the *Act*, I also allow the Tenant recovery of the filing fee.

### Conclusion

Pursuant to Section 67 of the *Act*, I find that the Tenant is entitled to a **monetary order** as follows:

Security Deposit owed, doubled (2 x \$1,175.00)	\$2,350.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$2,400.00</b>

The Landlord is directed to return the Tenant's security deposit, doubled, forthwith, along with the filing fee.

I am enclosing a monetary order for \$2,400.00 with the Tenant's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court (Small Claims) should the Landlord fail to comply with this monetary order.

As the Landlord has breached several sections of the Residential Tenancy Act, I am enclosing a Guidebook for his future reference.

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: June 30, 2011.

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Residential Tenancy Branch