



# 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 dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

I accept that the landlord was properly deemed served with the Application for Dispute Resolution hearing package by way of registered mail.

Both parties attended. The landlord pointed out that the landlords' names were wrong on the Application for Dispute Resolution. The landlord provided the full proper names and the Application was amended to reflect the correct names and spelling.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **BACKGROUND AND EVIDENCE**

The tenant testified that he vacated the premises at the end of December 2010. The tenant testified that he provided his forwarding address to the landlord verbally and then on January 17, 2011 he wrote to the landlords to formally request the return of his deposit and provide his forwarding address. In evidence the tenant submitted a copy of the letter he wrote to the landlords.

The landlord acknowledges receiving the tenant's forwarding address and agrees she has not returned the deposit but says it is because the tenant never paid a deposit. The landlord says the tenant moved to BC from Toronto with one child. The landlord says the tenant told her he was looking for work and did not have extra money to pay for a deposit. The landlord says she "...did him a favour..." by not charging the deposit.

The tenant responded that this was not so. The tenant says he got a phone call from the male landlord about 2 weeks prior to the date the tenant was to move in. The tenant says the male landlord told him he must come and pay a \$260.00 security deposit right away or else the landlord was going to rent the suite to someone else. The tenant says he did not receive a receipt for the deposit or for any of his rental payments because the landlord did not issue receipts.

The landlord responded that if the tenant wanted receipts his rent would have been increased to \$500.00 per month because once a receipt is issued the landlord must claim the sum received to Revenue Canada.

## **FINDINGS**

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The tenant says he paid a security deposit, the landlord says the tenant did not pay a security deposit. I prefer the testimony of the tenant. I make this preference because the landlord gave evidence under oath that she is willing to misrepresent her income to Revenue Canada. Given the landlord's admission that she is willing to make such misrepresentations I find I am more inclined to believe the tenant's version of events. To that end, I find that the tenant paid a security deposit of \$260.00 on or about September 15, 2007. The evidence is that the security deposit has not been returned to the tenant within 15 days of the landlord's receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on September 15, 2007	\$260.00
Double Security Deposit	260.00
Interest on original amount paid from date security deposit paid to date of this order	5.07
Filing Fees	50.00
<b>TOTAL MONETARY AWARD</b>	<b>\$575.07</b>

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.