



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the tenant to obtain double her security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on March 11, 2011. Canada Post tracking information was provided by the tenant in her documentary evidence which shows the hearing package was returned to the tenant. However the landlord is deemed to be served the hearing documents five days after service by registered mail pursuant to s. 90(a) of the *Act* and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

### Issue(s) to be Decided

- Is the tenant entitled to recover double her security deposit and accrued interest?

### Background and Evidence

The tenant testifies that this month to month tenancy started on December 22, 2008. Rent for this unit was \$625.00 per month and was due on the first of each month. The tenant paid a security deposit of \$300.00 on December 01, 2008.

The tenant testify that the tenancy ended on January 31, 2011 and she gave the landlord her forwarding address in writing on February 17, 2011 with a request for him to return her security deposit. (Copy provided).

The tenant states the landlord did forward a cheque to her for \$204.71 on March 15, 2011 with a letter detailing he had made deductions for an alleged repair. The tenant disputes this repair and testifies that she did not authorise the landlord to make any deductions from her deposit and states the landlord did not complete either the Move In or the Move Out condition inspections with her at the start or end of the tenancy.

The tenant seek to recover double her security deposit of \$600.00 and accrued interest of \$4.50 as it was not returned to her within 15 days of the landlord receiving her forwarding address. The tenant also seeks to recover the filing fee of \$50.00 paid for this application.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I further find that Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

Based on the above and the undisputed evidence presented I find that the landlord did receive the tenants forwarding address in writing on February 17, 2011. As a result, the landlord had until, March 04, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep it. Therefore, I find that the tenant has established a claim for the return of the security deposit and pursuant to section 38(6)(b) this deposit will be doubled to the sum of **\$600.00**. The portion of security deposit that has been returned of \$204.71 will be deducted from the amount owed to the tenant. I have calculated the interest accrued on the security deposit and find this amounts to **\$0.38** not the \$4.50 claimed by the tenant.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$600.00
<b>Subtotal</b>	<b>\$600.38</b>
Less amount all ready returned	(-\$204.71)
Plus filing fee	\$50.00
<b>Total amount due to the tenant</b>	<b>\$445.67</b>

### Conclusion

I HEREBY FIND in favor of the tenant monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$445.67**. The order must be served on the respondent 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: July 04, 2011.

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Residential Tenancy Branch

