



# 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 double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 23, 2010. The Canada Post tracking information was provided in the Tenant's Agent's testimony. She advised that the package was returned and marked "refused".

The Tenant's Agent (referred to as the Agent from here on in) appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present the Tenant's evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing on behalf of the Landlord despite her being served notice of today's hearing in accordance with the *Act*.

### Issues(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

The Agent testified that the parties entered into a verbal tenancy agreement that began on May 1, 2010. Rent was payable on the first of each month in the amount of \$1,350.00. The Tenant paid \$675.00 as a security deposit, in cash, during the last week of April 2010 and then three days after moving into the unit the Landlord demanded another \$675.00 to put towards the security deposit or she was going to evict them. The Tenant paid the second amount of \$675.00 in cash on approximately May 4, 2010. No move-in or move-out inspection forms were completed.

The tenancy ended October 31, 2010 when the Tenant vacated the property. On November 16, 2010 the Tenant hand delivered a letter to the Landlord which included his forwarding address, in writing, and a request for the return of his security deposit.

Sometime near the end of November 2010 the Tenant received a cheque in the amount of \$1,030.00 as partial refund of his security deposit. The Tenant has cashed the cheque and it cleared the bank okay. The Tenant did not authorize the Landlord to retain \$320.00 of the deposit.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenants' Agent.

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.

In this case the Landlord issued the Tenant a partial refund of the security deposit in the amount of \$1,030.00 and the balance of \$320.00 was retained by the Landlord. There is no evidence to support the Landlord had an Order issued by the *Residential Tenancy Branch* authorizing her to retain a portion of the security deposit and the evidence supports the Tenant did not provide the Landlord permission in writing for her to retain a portion of his deposit.

The evidence supports the tenancy ended October 31, 2010 and the Tenant provided the Landlord with his forwarding address on November 16, 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 in full, 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 December 1, 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 and/or pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double his security deposit plus interest, less the amount already received. .

I find that the Tenant has succeeded with his application therefore I award recovery of the \$50.00 filing fee.

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

Doubled Security Deposit 2 x \$1,350.00 plus interest of \$0.00	\$2,700.00
Filing Fee	<u>50.00</u>
Subtotal	\$2,750.00
LESS: partial payment received November 2010	-1,030.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,720.00</b>

### Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,720.00**. 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: June 06, 2011.

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Residential Tenancy Branch