



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant testified that she served the landlord with notice of this hearing via registered mail on July 4, 2011. She provided a print out of the tracking information from Canada Post clearly indicating the notice was successfully delivered to the landlord on July 5, 2011.

The tenant provide additional documentary evidence to the Residential Tenancy Branch on August 29, 2011, however, she testified that she did not provide this documentation to the landlord as such I advised the tenant that I would not be considering this additional documentation.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on August 4, 2007 for a month to month tenancy that began on September 1, 2007 for the monthly rent of \$750.00 due on the 1<sup>st</sup> of each month with a security deposit of \$375.00 paid on August 4, 2007.

The tenant also submitted into evidence a copy of her notice to the landlord dated February 25, 2011 of her intention to end the tenancy on March 31, 2011 and included

her forwarding address. The tenant submitted a copy of the move out Condition Inspection Report completed on March 30, 2011 showing that she again gave the landlord her forwarding address.

The tenant testified that about 1½ to 2 weeks after serving the landlord with the notice of this hearing she received a cheque from the landlord dated April 12, 2011 in the amount of \$382.53. The tenant testified that the landlord calculated the amount of interest owed from the start date of the tenancy (September 1, 2007) not from the date the security deposit was paid (August 4, 2007).

The tenant testified that she still had this cheque and has not attempted to cash it as the landlord has incorrectly spelled both the tenant's first name and her surname.

### Analysis

Section 38 (1) of the *Act* stipulates the landlord must, within 15 days of the end of the tenancy and the date the landlord receives the tenant's forwarding address in writing, return the security deposit and interest, less any mutually agreed upon, in writing, amounts or file an Application for Dispute Resolution to claim against the deposit.

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit paid by the tenant at the start of the tenancy.

I accept the tenant's assertion that the landlord miscalculated the amount of interest owed by using the start date of the tenancy instead of the date the security deposit was paid. I find the interest owed is \$7.97.

In the absence of any evidence or testimony from the landlord that is contrary to the tenant's testimony, I accept the landlord failed to comply with Section 38(1) of the *Act*.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$807.97** comprised of \$750.00 double the security deposit; \$7.97 interest and the \$50.00 fee paid by the tenant for this application.

I note that should the tenant be successful in negotiating the cheque that she has from the landlord in the amount of \$382.53 she must reduce this amount from the amount owed under this decision and order.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 01, 2011.

---

Residential Tenancy Branch