



# Dispute Resolution Services

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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 landlord did not attend.

The tenant provided receipts for registered mail addressed to the landlord at two separate addresses. One receipt is dated June 9, 2011 and the second is dated July 20, 2011. The tenant confirmed the landlord refused the registered mail sent on July 20, 2011.

The tenant testified that the landlord had maintained an apartment at the dispute address as well as another permanent address but since the tenant applied for dispute resolution the dispute address has been sold and the tenant served the landlord at his permanent address.

I accept the tenant served the landlord in accordance with *Residential Tenancy Act (Act)* and that the landlord is deemed to have been served with the documents 5 days after the tenant sent the registered mail, despite the landlord's refusal of the registered mail.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for an overpayment of rent; for double the amount of the security deposit; reimbursement for copies of cheques submitted to this hearing 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 *Act*.

### Background and Evidence

The tenant testified that the tenancy began on February 1, 2004 as a month to month tenancy for a monthly rent of \$625.00 and that a security deposit of \$310.00 was paid. The tenant further stated the agreement included the provision of satellite television when the landlord's son also lived in the rental unit. There was no written tenancy agreement.

The tenant testified when the landlord's son moved out and took the satellite dish with him, the tenant paid the landlord \$600.00 for rent for the month of August 2008. The tenant further testified the landlord verbally informed him that rent would be \$700.00 effective the following month and if the tenant objected the landlord would remove his belongings from the rental unit.

The tenant provided copies of all of his rent cheques for the duration of the tenancy that confirm the tenant paid \$625 per month from February 1, 2004 until July 1, 2008; \$600.00 for August 1, 2008 and \$700.00 per month from September 1, 2008 until the end of the tenancy on March 31, 2011.

The tenant provided a copy of his notice to end the tenancy dated February 28, 2011 with an effective vacancy date of March 31, 2011. The notice included the tenant's forwarding address. The tenant testified that despite contacting the landlord on at least 2 occasions in early April 2011 the landlord has never returned his security deposit.

### Analysis

Section 42 of the *Act* prescribes the timing and method a landlord must follow in imposing a rent increase. The section stipulates that the landlord must give the tenant notice of a rent increase at least 3 months in advance of the effective date. It goes on to say that the notice must be in the approved form.

Based on the tenant's undisputed testimony and evidence, I find the landlord failed to provide 3 month's notice of a rent increase and failed to provide notice in the approved form.

Section 43 requires the landlord to limit the amount of a rent increase to that amount that would be calculated under the regulation. Section 22 of the regulation limits the calculation of a rent increase to a percentage amount that equals the inflation rate plus 2%.

In 2008, the allowable rent increase was 3.7% and in this case an increase of \$22.20 would be the maximum allowable rent. I find the landlord increased the rent in an amount in excess of the allowable rent increase for 2008.

As I have found the landlord failed to comply with both Sections 42 and 42, I find the tenant is entitled to the recovery of all rental amounts paid in excess of \$600.00 from September 1, 2008 to March 31, 2011.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

I accept the tenant provided the landlord with his forwarding address prior to the end of the tenancy and that the tenancy ended on March 31, 2011. As such the latest the landlord could return the security deposit to the tenant was April 15, 2011. I accept the tenant's undisputed testimony that he has not received his security deposit at all.

As to the tenant's claim for costs relating to copying cheques, I find the *Act* does not provide for costs associated with the applicant's choices in how to present their case at a hearing and I dismiss this portion of the tenant's Application.

### Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,780.98** comprised of \$3,100.00 overpayment of rent; \$620.00 double the security deposit held; \$10.98 interest accrued on the security deposit held and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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 08, 2011.

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Residential Tenancy Branch