

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of double the security deposit?

### Background and Evidence

Both parties have attended the hearing by conference call and the Landlord has acknowledged receiving the Tenant's evidence package. The Landlord did not submit any evidence.

The Tenant states the Tenancy ended on April 30, 2011 and the Landlord failed to return the \$825.00 security deposit. There is a dispute over damage and repairs to the unit. The Tenant states that the Landlord sent a cheque for \$634.60 dated June 21, 2011 in an envelope post marked July 2, 2011 returning this portion of the undisputed amount of the security deposit. As of the date of this hearing, the Landlord states that the forwarding address in writing has not been received from the Landlord. The Tenant confirms this stating that the home address was provided to the Landlord at the beginning of the Tenancy. The Landlord has confirmed that he did not return the entire security deposit, nor has he filed for dispute resolution over the security deposit.

### Analysis

Both parties have attended the hearing by conference call and the Landlord has confirmed receipt of the Tenant's evidence and has not filed any evidence, I am satisfied that both have been properly served with the notice of hearing package.

Section 38 of the Residential Tenancy Act states,

**Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) **the date the tenancy ends, and**

(b) **the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find based upon the direct testimony provided by both parties that the Tenant has failed to provide the forwarding address in writing to the Tenant. The Tenant's application for the return of double the security deposit is dismissed.

I find also based upon the direct testimony of both parties that the Landlord has failed to repay the security deposit or file for dispute resolution within the allowed time frame of the Act. The Landlord may not make a claim against the security deposit. As such, the Tenant is granted a monetary order for the return of the complete security deposit of \$825.00. The Tenant currently holds a cheque for \$634.60 issued by the Landlord. The Tenant is further granted a monetary order for \$190.40 for the balance due of the entire \$825.00 security deposit. The Tenant is entitled to the recovery of the \$50.00 filing fee. I grant the Tenant a monetary order under section 67 for the balance due of \$240.40.

This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's application for the return of double the security deposit is dismissed.  
The Landlord has failed to repay or file an application for dispute and may not make a claim against the security deposit.  
The Tenant is granted a monetary order for \$240.40.

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: October 03, 2011.

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Residential Tenancy Branch