



# 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 the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both parties

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return 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 parties agree the tenancy began on November 1, 2010 as a 6 month fixed term tenancy that converted to a month to month tenancy on May 1, 2011 for a monthly rent of \$1,395.00 due on the 1<sup>st</sup> of each month and that a security deposit of \$697.50 was paid before November 1, 2010. The tenancy ended on July 31, 2011.

The parties agreed that they completed a walkthrough of the rental unit at the end of the tenancy but that the landlord did not have a copy of a the original move in Condition Inspection Report that would later confirm the tenant had been issued two key fobs.

The tenant testified that she provided her forwarding address to the landlord at this time, however the landlord testified the tenant did not provide her with an address then. Both parties agreed the tenant did provide her forwarding address via email on August 26, 2011.

The landlord provided several emails reflecting correspondence between the landlord and tenant, as follows:

Date	From	Content
August 2, 2011	Landlord	Will return security deposit via email transfer before August 14, 2011.
August 8, 2011	Landlord	Has found move in Condition Inspection Report and will deduct costs for key and fob and email

August 20, 2011	Tenant	transfer the balance.
August 25, 2011	Landlord	Asks when she can expect to be getting security deposit minus the cost for keys and fob
August 26, 2011	Tenant	Has mail to be forwarded requests address States already provided at walkthrough but provides it again

### Analysis

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, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Because both parties dispute that the tenant provided her forwarding address to the landlord at the move out condition inspection walkthrough and neither party has provided any documentary evidence to support their statements, I cannot rely on the statements to confirm the tenant's claim.

However, I also accept that the tenant believed that she had provided the landlord with her forwarding address and since the landlord indicated twice that she would be return the security deposit via email transfer, the tenant had no way of knowing the landlord would contend that she did not have the address.

As the email submitted into evidence by the landlord dated August 26, 2011 is the only documentary evidence of how and when the tenant provided her forwarding address to the landlord, I accept the tenant provide the landlord with her address on August 26, 2011.

Accordingly, the *Act* requires the landlord either return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution no later than September 10, 2011. Despite the landlord's understanding that because the tenant already had applied for dispute resolution the *Act* does not suspend these obligations of the landlord if the tenant has filed for return of her security deposit.

As such, I find the landlord failed to comply with Section 38(1) of the *Act* and the tenant is therefore entitled to return of double the amount of the security deposit. I also find that the email dated August 20, 2011 from the tenant to the landlord that states: "...let me know when I can expect to be getting my damage deposit minus the cost for keys and fob?" does not constitute an agreement on the part of the tenant to a deduction for those costs.

However, these findings do not preclude the landlord from filing an Application for Dispute Resolution for any claims of loss or damage that she may have against the tenant, in accordance with the provisions of the *Act*.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,445.00** comprised of \$1,395.00 double the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: November 16, 2011.

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Residential Tenancy Branch