



# 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 tenant's Application for Dispute Resolution seeking a monetary order.

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

During the hearing both parties presented substantial testimony regarding the condition of the rental unit but neither party provided evidence to corroborate this testimony. The landlord testified that he was told not to submit evidence by an Information Officer.

While I cannot comment on instructions he may or may not have received, I advised both parties that as this was the tenant's Application seeking return of double the amount of the security deposit based on Section 38(6) and because the landlord's Application seeking compensation for damage to the unit had been dismissed without liberty to reapply, the condition of the rental was not relevant to these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of 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 parties agree the tenancy began in September 2010 as an 8 month fixed term tenancy for a monthly rent of \$900.00 due on the 1<sup>st</sup> of each month with a security deposit of \$450.00 and a pet damage deposit of \$450.00 paid. The tenancy ended on May 1, 2011.

Without the tenant providing the landlord with a forwarding address, the landlord filed an Application for Dispute Resolution seeking to retain the security deposit and pet damage deposit and for additional compensation for damage to the rental unit on May 20, 2011. A hearing was conducted on August 30, 2011 and the decision to dismiss the landlord's Application without liberty to reapply was written on the same day.

The parties agreed in the hearing that the tenant provided the landlord with her forwarding address sometime in June or July 2011. The landlord did not return the tenant's security deposit.

### 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 and pet damage deposit or make an Application for Dispute Resolution claiming against them. 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 and pet damage deposit.

I accept from the testimony of both parties that the tenancy ended on May 1, 2011 and that the tenant provided the landlord with her address in writing sometime in June or July 2011. Without providing any specific dates I find this means the tenant may have provided her address as late as July 31, 2011 and as such, the landlord had until August 15, 2011 to return the security deposit and pet damage deposit or file an Application for Dispute Resolution seeking to claim against the deposits.

As the landlord had already submitted an Application for Dispute Resolution seeking to claim against the security deposit, I find the landlord fulfilled his obligations under Section 38(1) and as such, the tenant is not entitled to double the return of the deposits.

However, as the landlord was unsuccessful in his claim, based on the dismissal from the August 30, 2011 hearing, I find he does not have authority to retain the deposits.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$950.00** comprised of \$900.00 security deposit and pet damage deposit 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: December 20, 2011.

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Residential Tenancy Branch