



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit wrongfully retained by the landlord.

Although served with the Notice of Hearing and application by registered mail sent on September 26, 2011, the landlord did not appear.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

The burden of proof is on the applicant to show that the deposit was paid and that the forwarding address was given.

### **Background and Evidence**

The tenant was seeking to receive a monetary order for the return of the security deposit of \$325.00 paid at the start of the tenancy on June 1, 2008.

The tenant testified that she moved out of the unit on August 27, 2011 pursuant to a Two Month Notice to End Tenancy for Landlord's Use and provided the forwarding address in writing on August 15, 2011. However, the landlord did not return the deposit. As the security deposit was not returned within the required 15 days, the tenant is seeking a refund of double the deposit.

### **Analysis**

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act provides that, within 15 days after the later of the day the tenancy ends and the date the tenant's written forwarding address has been received, the landlord must either repay the security deposit or pet damage deposit to the tenant with

interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep it to satisfy a liability or obligation of the tenant. The landlord can also retain the deposit for a debt if an order has been obtained by the landlord after the end of the tenancy.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that, If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit with interest was \$325.00 and under the Act the tenant is entitled to \$650.00 plus \$3.26 interest and the \$50.00 cost of the application for total compensation of \$703.26

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$703.26. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and 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 12, 2011.

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Residential Tenancy Branch