



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on October 28, 2011. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, Regulations or tenancy agreement?

### Background and Evidence

The tenant testifies that this tenancy was supposed to start on September 01, 2011. The tenant states he viewed the rental unit and paid the first month's rent of \$550.00 and a security deposit of \$250.00 on August 15, 2011. The tenant testifies that he told the landlord that he was on a waiting list for student housing and would notify the landlord if he got his student housing he would no longer need the rental unit. The tenant testifies that the landlord agreed to this. The tenant testifies that on August 22, 2011 he did get an offer for student housing which he accepted and he e-mailed the landlord to inform her that he no longer required the unit.

The tenant testifies that he asked the landlord for a refund of the monies paid and she agreed to refund him the \$800.00 as soon as her husband got back from out of town. The tenant provided his bank account details to the landlord to assist her in making his refund. The tenant testifies that the landlord kept saying she would refund the money but kept making excuses not to do so. The tenant testifies that to date he has still not received his refund for rent and security deposit and seeks a Monetary Order to recover the sum of \$800.00 from the landlord.

The tenant testifies that all correspondence was conducted by e-mail and the tenant has provided a copy of the e-mails in evidence. The tenant states he has not given the landlord his forwarding address in writing.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing whichever is the later to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or

part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

In this matter however the tenant agrees he has not yet provided the landlord with his forwarding address in writing. Therefore, it is my decision that the tenants claim to recover the security deposit paid for this rental unit is premature. The tenant must provide the landlord with his forwarding address in writing and then is at liberty to file an application to recover the security deposit if the landlord does not return it within 15 days of receiving the forwarding address.

The tenant has also applied to recover the rent paid for the first month. In normal circumstances a tenant would have to provide one clear month's written notice to end his tenancy; however the e-mail correspondence between the tenant and landlord clearly indicates that the landlord agreed to refund the tenants money and has failed to do so

The tenant is therefore entitled to recover the sum of \$550.00 paid for rent for September, 2011 and a Monetary Order for this amount has been issued pursuant to s. 67 of the *Act*.

As the tenant has been partially successful with this claim I find the tenant is also entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$600.00** comprised of a rent refund and the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court 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: January 13, 2012.

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Residential Tenancy Branch