



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, SS, 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 the tenant and the landlord

The tenant testified and provided a copy of a receipt confirming he served the landlord with the notice of hearing documents and his Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 29, 2011 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

The landlord testified that he receives a lot of registered mail but does not recall receiving this package from the tenant. The landlord further states he found out about the hearing because the tenant had indicated there was hearing forthcoming in some email correspondence and he contacted the Residential Tenancy Branch for call in instructions.

The tenant testified that he had checked the Canada Post tracking system and it shows the landlord himself signed for the package on or before December 1, 2011.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the tenant testified that he was not seeking an order to allow serving the landlord in a different way than required by the *Act*. As such, I amend the tenants' Application to exclude this matter.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are 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 *Act*.

### Background and Evidence

The parties agree the tenancy began on August 1, 2011 as a 1 year fixed term tenancy with a monthly rent of \$1,375.00 due on the 1<sup>st</sup> of each month plus 60% of the utility costs with a security deposit of \$687.50 paid on July 9, 2011. The parties agree the tenancy ended on September 30, 2011.

The parties agree the tenant owes the landlord \$116.13 for utility costs that they agreed the landlord could deduct from the security deposit.

The tenant testified he provided the landlord's wife with his forwarding address 2 days prior to the end of the tenancy. The landlord confirmed that his wife received the forwarding address in September 2011 and that he mailed cheque to the tenant on October 12, 2011 in the amount of \$571.37.

The tenant provided copies of emails, into evidence, sent to the landlord asking for return of the deposit over several weeks but that the landlord failed to respond. He testified that he tried to call the landlord but never received any calls back. The landlord testified that he never received any messages but he doesn't always receive his messages.

The landlord testified that the email address that the tenant used was not normally monitored and the tenant was aware of this, as such it was not until early February the landlord discovered by reviewing his financials for 2011 that the tenants had not cashed the cheque he issued in October 2011.

The landlord further testified that he has never received the cheque back and it has not been cashed. The landlord provided no evidence that this a cheque was written or mailed such as a copy of a ledger or stubs from a cheque book showing the cheque was issued.

The parties acknowledged that they have recently had email communication trying to settle this dispute but that they have not been able to come to any mutually acceptable agreement.

### 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.

I find the landlord, had received the tenants' forwarding address prior to the end of the tenancy and as such, the landlord would have until October 15, 2011 to return the security deposit less the agreed upon amount for utilities.

In the absence of any evidence or corroboration from the landlord I find the landlord has failed to establish that he mailed a cheque to the tenants on October 12, 2011. Further despite the landlord's assertion that he was not aware until February that the tenants had not received the cheque, I note, as per my finding above that the landlord did receive a copy of the tenants' Application for Dispute Resolution.

As such, I find that the landlord was aware of the tenants' claim and that the tenant had not received the security deposit when he received the notice of hearing documents from the tenants in December 2011.

For these reasons, I find the landlord failed to comply with Section 38(1) and as such the tenants are entitled to return of double the security deposit in accordance with Section 38(6).

I also find that despite attempts by both parties to settle this dispute prior to the hearing that the landlord's efforts came at least 2 months after he was made aware of the claim and as such the landlord failed to take reasonable steps to resolve the matter in a timely manner.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,308.87** comprised of \$1,375.00 double the amount of the security deposit and the \$50.00 fee paid by the tenants for this application less \$116.13 in utilities owed by the tenants.

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: February 14, 2012.

---

Residential Tenancy Branch