



# 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 a Monetary Order for return of double the security deposit less a partial refund received from the landlord. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit, less a partial refund received from the landlord?

### Background and Evidence

I heard undisputed evidence as follows: The tenancy commenced June 12, 2010 and the tenant paid a \$397.50 security deposit. The tenant was required to pay rent of \$795.00 on the 1<sup>st</sup> day of every month. A condition inspection report was not prepared at the beginning of the tenancy. The tenant vacated the rental unit September 1, 2011. While the tenant was in the process of moving out on September 1, 2011 the landlord attended the property and a disagreement ensued about patching holes in the walls. The tenant finished packing and left. The tenant subsequently mailed his forwarding address to the landlord and the landlord received the letter on September 28, 2011. The tenant did not authorize the landlord to make any deductions from the security deposit in writing. The landlord mailed a letter and a cheque for \$100.00 to the tenant's forwarding address on October 3, 2011. The tenant confirmed he cashed the cheque.

By way of this application the tenant is seeking return of double the security deposit less the \$100.00 payment he has already received.

The landlord had provided photographs of the property and other evidence pertaining to the condition of the rental unit. In response to the tenant's claims, the landlord submitted that the tenant caused damage to the rental unit. The landlord confirmed that

she had not filed an Application for Dispute Resolution seeking to recover damages against the tenant. The landlord was informed of her right to do so within two years of the tenancy ending.

Relevant documentation provided for this proceeding included copies of: the tenancy agreement; the tenant's letter with forwarding address dated September 27, 2011; the landlord's letter of October 3, 2011 complete with the front of the envelope; and, the registered mail receipt.

### Analysis

As the parties were informed during the hearing, the landlord's submission that the tenant caused damage to the unit was not an issue for me to decide for this proceeding as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's application and determine whether the landlord complied with the Act with respect to the security deposit. The landlord is at liberty to make her own application for damages within the time limit established by the Act.

Section 38 of the Act provides for the return of security deposits. The landlord was required to comply with section 38(1) of the Act by either returning the security deposit to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Based upon the evidence before me, I find the landlord failed to repay \$297.50 of the security deposit to the tenant or make an Application for Dispute Resolution within 15 days from receiving the tenant's forwarding address. Therefore, the landlord must now pay the tenant double the security deposit retained by the landlord without the legal right to do so. The tenant is further awarded the filing fee paid for making this application.

I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit (\$297.50 x 2)	\$ 595.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 645.00

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$645.00 to serve upon the landlord.

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 24, 2012.

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Residential Tenancy Branch