



# 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 and the pet damage deposit retained by the landlord.

Although served with the Notice of Hearing and application by registered mail sent on November 16, 2011 and the amended application sent on November 17, 2011, the landlord did not appear and the hearing proceeded in the absence of the landlord.

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

The tenant was seeking to receive a monetary order for the return of the security deposit of \$425.00 paid at the start of the tenancy on in June 2008.

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 testified that the tenant had moved into the unit in June 1, 2008 and paid a security deposit of half a month's rent in the amount of \$425.00. the tenant moved out of the unit on September 30, 2011. The tenant testified that the forwarding address was given to the landlord on the last day and submitted a copy of the move-in and move-out condition inspection reports showing the forwarding address, but that the landlord has not returned the deposit, nor has the landlord made any application to retain the deposit. The tenant is requesting double the deposit wrongfully retained by the landlord.

### **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 the deposit 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 security deposit or any pet damage 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 \$428.73 and that under the Act the tenant is entitled to \$903.73. This represents \$850.00 for double the deposit, plus \$3.73 interest on the original deposit and the \$50.00 fee paid by the tenant for this application.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$903.73. 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: February 06, 2012.

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Residential Tenancy Branch