



# 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 retained by the landlord.

Although served by registered mail sent on January 23, 2012, the landlord did not appear. I find that the tenant complied with the Act in properly serving the Notice of Hearing by registered mail.

### **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.

### **Background and Evidence**

The tenant testified that the tenancy began on August 29, 2011. The rent was \$525.00 and a security deposit of \$250.00 was paid. The tenant testified that the tenancy ended on October 23, 2011 and the written forwarding address was provided to the landlord prior to the move out date. Copies of the security deposit cheque and communications between the parties were in evidence. The tenant testified that the landlord did not return the security deposit, nor did the landlord make an application for dispute resolution to obtain an order to keep the deposit. The tenant was seeking a monetary order for the return of double the security deposit minus \$60.63 owed for hydro and internet access for September 2011 and hydro and internet for October 2011.

### **Analysis**

In regard 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 landlord receives the tenant's forwarding address in writing, 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. In this instance, the landlord did not refund the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant at the end of the tenancy. The tenant testified that this did not occur and I find that the tenant did not give the landlord written permission to keep any part of the deposit, nor did the landlord make application for an order to keep the deposit.

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 and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that, under the Act, the tenant is entitled to double this amount, which is \$500.00. After deducting \$60.63 owed to the landlord for utilities, I find that the remaining refund owed to the tenant is \$439.37. I find that the tenant is also entitled to be reimbursed the \$50.00 paid for this application. Accordingly, I find that the tenant is entitled to a total monetary order for \$489.37.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$489.37. 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 13, 2012.

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Residential Tenancy Branch