



# 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 an application by the tenant for a monetary order for the return of double the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

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

Did the tenant pay a security deposit? If so, is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the filing fee?

### **Background and Evidence**

The tenancy began on February 01, 2005 and ended on December 15, 2011. The monthly rent was \$800.00 payable on the first of the month. The tenant stated that prior to moving in; her boyfriend paid the security deposit in cash on December 28, 2004. The tenant stated that her boyfriend was not given a receipt.

At the end of the tenancy, the landlord denied her request for the return of the security deposit because he stated that he had not received a security deposit. The tenant stated that her only proof of payment was the tenancy agreement. However, the tenancy agreement has the amount written in but does not have a date of payment. The landlord pointed out that there were lines drawn by him close to this clause because it had not been paid.

In 2007, the landlord raised the rent and requested that the tenant pay an additional \$40 plus the \$362.50 from the original amount of security deposit that she owed. The landlord filed a copy of this new agreement to support his testimony.

The landlord also stated that he offered the tenant a payment plan – but the tenant did not make any payment towards the security deposit.

The tenant stated that except for the security deposit all payments to the landlord were made by cheque. The tenant is claiming the return of double the security deposit and the filing fee.

### **Analysis**

In this case, the landlord maintains that the tenant did not pay a security deposit and is therefore not entitled to its return. The tenant states that she paid the security deposit but has no evidence to support her claim.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant testified that she made all payments to the landlord by cheque except for the security deposit which was paid in cash. In the absence of a receipt and based on the evidence filed by both parties and the verbal testimony during the hearing, I find on a balance of probabilities that it is more likely than not that the tenant did not pay a security deposit to the landlord and therefore I find that the tenant is not entitled to the return of the security deposit. Accordingly her application is dismissed. The tenant must bear the cost of filing her application.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: March 21, 2012.

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Residential Tenancy Branch