



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation of double the original security deposit under Section 38 of the *Residential Tenancy Act (the Act)*. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both parties attended the hearing and were given full opportunity to resolve their dispute, to present all relevant evidence and testimony in respect to the application and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the tenant entitled to double the security deposit amount claimed?

### **Background and Evidence**

The undisputed facts before me are as follows. The tenancy began on December 01, 2009 and ended on November 30, 2011. The landlord collected a security deposit of \$625.00 at the outset of the tenancy. There was no move in inspection conducted at the outset. There was no move out inspection conducted at the end of the tenancy. The parties acknowledged that on October 28, 2011 the landlord received the tenant's forwarding address by e-mail, as provided by the tenant. The tenant provided a copy of

the e-mail. Both parties acknowledged that e-mail communication between them was their primary mode of communication throughout the tenancy and in respect to matters of the tenancy, although other modes were available to the parties.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

**Section 38(1)** of the Act provides as follows (**emphasis for ease**)

**38(1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I accept the parties' testimony that e-mail communication was the parties' primary mode of communication during the tenancy and in respect to matters of the tenancy. As a result I find that in this matter e-mail communication is synonymous with written communication, and that the landlord was in possession of the tenant's forwarding address on October 28, 2011. Therefore, I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution to retain it within 15 days of the tenancy ending November 30, 2011 (subsequent to receiving the tenant's forwarding address) and is therefore liable under section 38(6) which provides:

**38(6)** If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) **must pay the tenant double** the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$625.00 and was obligated under section 38 to return this amount. The amount which is doubled is the \$625.00 of the original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$1250.00** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1300.00**.

### **Conclusion**

I grant the tenant an order under Section 67 of the Act for the sum of **\$1300.00**. If necessary, this order may be filed in the Small Claims Court 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: March 13, 2012

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Residential Tenancy Branch