



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application for the return of double the security deposit.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch However, the landlord's evidence was sent late to the tenant and the tenant did not send evidence to the landlord. Therefore nether parties' documentary evidence has been considered.

### Issue(s) to be Decided

Is the tenant entitled to the return of double the security deposit?

### Background and Evidence

Both parties agree that this tenancy started on May 01, 2010. This was a fixed term tenancy which was due to expire on October 31, 2010. The tenancy ended on May 31, 2010. Rent for this unit was \$869.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$434.50 on April 21, 2010.

The tenant testifies that he could not live in the unit and filled in one of the landlord's forms giving the landlord the reason he could not continue to live in his unit. The tenant testifies that on that form he also gave the landlord his forwarding address. This form was

completed and returned to the landlord on May 07, 2010. The tenant testifies that the landlord has not returned his security deposit within 15 days of the end of the tenancy. The tenant testifies that the landlord agreed if the tenant found another tenants to take over the lease of the unit the landlord would return the tenants full security deposit. The tenant testifies the landlord did return \$184.00 from his security deposit but as this was not the full amount the tenant testifies he returned this to the landlord on September 07, 2010. The tenant seeks to recover double his security deposit from the landlord.

The landlord agrees they have not applied to keep the security deposit and agrees the tenant did not give the landlord written permission to keep the security deposit other than when the tenant first signed the tenancy agreement. The landlord testifies that they returned \$184.50 of the tenant's security deposit on June 04, 2010 and as this amount was sent within 15 days the tenant would only be entitled to recover double the balance of \$250.00 plus the \$184.50 the tenant returned to the landlord.

### Analysis

I have carefully considered the sworn testimony of both parties and I refer the parties to Section 38(1) of the *Residential Tenancy Act (Act)* that says a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing, whichever is the later date, to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the testimony presented I find that the landlord did receive the tenants forwarding address in writing dated May 07, 2010 and the tenancy ended on May 31, 2010. As a result, the landlord had until June 15, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. The landlord argues that they did return \$184.50 on June 04, 2010 so as this

was within the 15 days this should not be included when doubling the balance of the deposit.

The *Act* is clear under section 38(1) and 38(6)(b) that unless the tenant has agreed in writing at the end of the tenancy that the landlord may keep all or part of the security deposit or the landlord has applied to keep the security deposit, then the landlord must return all of the security deposit. If the landlord fails to return all of the deposit then the tenant is entitled to have the full amount of the deposit doubled. Therefore, I find that the tenant has established a claim for the return of double the security deposit of \$434.50 and will receive a Monetary Order to the sum of **\$869.00** pursuant to section 38(6)(b) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$869.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 16, 2012.

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Residential Tenancy Branch