



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act* or regulation?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*

### Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement that began on September 1, 2010 and ended May 20, 2011 after the Tenant was evicted so the Landlord's wife could occupy the rental unit. Rent was payable on the first of each month in the amount of \$700.00 and on or before September 24, 2010 the Tenant paid \$350.00 as the security deposit. No condition inspection report form was completed and provided to the Tenant on move in or at move out.

The Landlord affirmed that on June 22, 2011 he received the Tenant's letter which was personally delivered to his mailbox. Upon receipt of this letter with the Tenant's forwarding address the Landlord sent the Tenant a cheque in the amount of \$207.85 as the return of a portion of the Tenant's security deposit less deductions of \$143.15 which was the cost to repair a wall in the rental unit.

The Landlord confirmed he has made no application to retain the security deposit and he does not have the Tenant's written permission to keep a portion of the deposit. He advised he does not know if his wife completed a move in condition report and argued that he had a verbal agreement with the Tenant to conduct the move out inspection after the long weekend.

The Tenant confirmed there was no move in inspection completed and that he had no verbal agreement to meet to do the move out inspection. He is seeking return of double his deposit less the amount already reimbursed.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, Canada Post receipts, a letter from the Tenant's mother and a copy of the June 22, 2011 letter issued by the Tenant to the Landlord listing the Tenant's forwarding address.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports there was no move in inspection report at the onset of this tenancy, that the tenancy ended May 20, 2011 and that the Tenant provided the Landlord with his forwarding address in writing on June 22, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit, if the landlord has not extinguished their right to claim against the deposit.

When a landlord fails to properly complete a condition inspection report, the landlord's right to claim against the security deposit for damage to the property is extinguished. In this case the Landlord did not carry out move-in or move-out inspections or complete condition inspection reports; therefore he lost his right to claim the security deposit for damage to the property. Accordingly, the Landlord was required to return the Tenant's security deposit in full no later than July 7, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish his claim and I award him double his security deposit plus interest less the amount already returned in the amount of **\$493.15** (2 x \$350.00 + \$0.00 interest – \$206.85 that was returned June 22, 2011).

The Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$543.15** (\$493.15 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: April 17, 2012.

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Residential Tenancy Branch