



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant's advocate only. The landlord did not attend.

This decision must be read in conjunction with the Interim Decision issued on March 30, 2012 allowing the tenant to serve the landlord with Notice of this hearing and with all evidence related to this hearing via email and through the landlord's legal counsel.

The tenant's advocate testified she served the landlord with all required documentation as outlined in the March 30, 2012 Interim Decision in accordance with the methods allowed in that decision.

Based on the testimony of the advocate, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for rent paid and for return of double the amount of the security deposit, pursuant to Sections 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted into evidence the following documents:

- A copy of a tenancy agreement for a 1 year fixed term tenancy beginning on March 1, 2010 for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$475.00 paid;
- A copy of an Evacuation Order from the local government's Fire Chief and General Manager of Fire Services dated January 6, 2011 requiring an immediate evacuation of the residential property due to imminent and serious danger to life;
- A copy of an Evacuation Notice to Tenants provided to the tenants from the local government's Chief Building Official and City Electrician advising the tenants they must vacate immediately and re-occupancy will only be allowed after all

required repairs are achieved and the landlord obtains a re-occupancy permit; and

- A copy of the letter written to the landlord on August 15, 2011 from the tenant's advocate and the tenant requesting the landlord return the tenant's rent for the month of January 2011 and return of the security deposit.

The tenant's advocate testified the tenant has received no monies from the landlord for either the return of rent or the return of the security deposit.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept, from the evidence submitted and in the absence of any evidence or testimony to the contrary that the landlord was provided with the tenant's forwarding address in the letter dated August 15, 2011. Allowing for 5 days for the letter mailed to the landlord I find the landlord received the letter on or before August 20, 2011.

As such, the landlord had until September 4, 2011 to either return the tenant's security deposit in full or to file an Application for Dispute Resolution seeking to claim against the deposit. Based on the undisputed evidence before me, I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit in accordance with Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law. I accept, based on the evacuation order submitted into evidence that the landlord failed to comply with Section 32.

As the tenant paid rent for the month January 2011 and the was unable to live in the unit after the evacuation order was issued as a direct result of the landlord's failure to comply with Section 32, I find the tenant suffered a loss as a result of the landlord's

violation of Section 32. I find the tenant has established that value to be that of the value of rent in the tenancy agreement.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,900.00** comprised of \$950.00 rent owed and \$950.00 double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: April 24, 2012.

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Residential Tenancy Branch