



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNDC O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on March 2, 2012. Registered mail receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with the Act.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite him being served notice of this hearing in accordance with the Act.

### 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 Tenant affirmed he entered into a fixed term tenancy agreement that began May 1, 2011 and ended when he vacated the rental unit on about December 31, 2011. Rent was payable on the first of each month in the amount of \$700.00 and Mid May 2011 the Tenant paid \$350.00 as the security deposit. No move in condition inspection report was completed at move in or at move out.

The Tenant stated he has provided his forwarding address in writing to the Landlord via mail on approximately December 14, 2011 and the Landlord has failed to return his security deposit to him.

The Tenant confirmed he has since moved to the address as listed on his application for dispute resolution effective April 1, 2012.

### Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as presented by the Tenant.

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 the tenancy ended December 31, 2011, pursuant to section 44(1)(d) and that the Tenant provided the Landlord with his forwarding address in writing on or before December 15, 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.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than January 15, 2012. The Landlord did neither.

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 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 in the amount of **\$700.00** (2 x \$350.00 + \$0.00 interest).

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 **\$750.00** (\$700.00 + \$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: May 03, 2012.

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Residential Tenancy Branch