



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This review hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Procedural and Preliminary Matters

The tenant's application and the landlord's application filed under file no. 787949 were originally scheduled to be heard together, as cross applications, on April 30, 2012. Both parties appeared on April 30, 2012 and the matter was adjourned to permit exchange of evidence and schedule a longer hearing. On June 5, 2012 the hearing was re-convened and when neither party called into the conference call the applications were dismissed with leave to reapply.

The tenant applied for review consideration on the basis he was unable to attend the June 5, 2012 hearing and the request was granted. Although the review consideration decision identifies both file numbers associated to the tenant's application and the landlord's application, only the tenant was ordered to serve copies of the review consideration decision and Notice of Hearing. Therefore, I found that the review hearing was set to re-hear the tenant's application only.

The landlord stated she was also unable to attend the June 5, 2012 hearing and was not informed of her right to file an Application for Review Consideration so she filed another application which is set to be heard August 13, 2012. During this hearing with me, the landlord took the position that both applications should be heard together and that the scheduled hearing date of August 13, 2012 is not suitable for her. I advised the parties that I would proceed to hear from the parties so as to determine the nature of the disputes and determine whether it is necessary to hear the applications together.

Having heard the landlord's application pertains to claims for damage to the rental unit only and the landlord did not prepare a move-in condition inspection report upon doing a

“walk through” with the tenant I determined that the landlord extinguished her right to claim against the security deposit. Since the tenant was seeking return of the security deposit I found that these applications did not need to be heard together. Accordingly, I proceeded to hear the tenant’s application and informed the landlord’s claims would be heard August 13, 2012.

The landlord is informed of her right to contact the Residential Tenancy Office and request a re-scheduling of the August 13, 2012 hearing date in accordance with the Rules of Procedure.

### Issue(s) to be Decided

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

### Background and Evidence

The following information was undisputed by the parties:

- The tenancy commenced January 15, 2011 and ended January 30, 2012;
- The monthly rent was \$850.00;
- The tenant paid a \$425.00 security deposit on January 16, 2011;
- The landlord and tenant did a “walk through” of the property but the landlord did not prepare a move-in inspection report; and,
- The tenant did not authorize any deductions from his security deposit in writing.

The tenant testified that on January 30, 2012 he provided the landlord with his forwarding address in a text message. He further submitted that on February 1, 2012 he delivered his forwarding address to the landlord in writing when he returned to the property at approximately 10:30 a.m. to deliver the keys to her. The tenant returned to the property on a later date to pick up plants he had left behind but did not give his forwarding address to the landlord again.

The landlord testified that she received a text message from the tenant with his forwarding address and that she read it incorrectly when filing her application on March 2, 2012. The landlord recalled getting the keys from the tenant on February 1, 2012 but claimed she could not recall the tenant giving her a forwarding address on February 1, 2012. Rather, the landlord stated that she received the forwarding address in writing on February 6 or 7, 2012 when he returned to pick up more of his plants. In mid-February the tenant returned to the property to retrieve his fish tank in the accompaniment of the police.

The tenant had a witness testify to the following: The witness was with the tenant on February 1, 2012 and saw a piece of paper with the tenant's forwarding address on it while they were in the car in the driveway of the residential property. The witness saw the tenant take the piece of paper with him when the tenant went to the side of the house to talk to the landlord. The witness remained in the car while the tenant met with the landlord.

### Analysis

The Act requires the landlord to prepare a condition inspection report at the beginning and end of the tenancy. Where a landlord fails to fulfill this obligation the landlord's right to claim against the security deposit for damage to the unit is extinguished. The landlord, however, retains the right to file an Application for Dispute Resolution seeking compensation from the tenant for damage to the unit or other damages or loss associated to the tenancy.

As the parties were informed during the hearing, since the landlord's right to claim against the security deposit was extinguished by failure to prepare a move-in inspection report, I did not hear the landlord's claims for damage to the unit as they were not relevant to the tenant's application. Rather, the issue to determine under the tenant's application is whether the landlord administered the security deposit in accordance with section 38(1) of the Act.

The landlord was required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Whether the forwarding address was provided to the landlord on February 1, 2012 as submitted by the tenant or February 6 or 7, 2012 as submitted by the landlord, I find the landlord failed to comply with section 38(1) of the Act since the landlord did not return the security deposit or file an application within 15 days after any of the dates put forward by the parties as the date the forwarding address was given to the landlord.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

Having found the landlord violated section 38(1) of the Act, the tenant is entitled to receive double the security deposit pursuant to section 38(6) of the Act. Accordingly, I order the landlord to pay the tenant \$850.00 plus the \$50.00 he paid for his application.

The tenant is provided a Monetary Order in the total amount of \$900.00 to serve upon the landlord and enforce as necessary.

Conclusion

The tenant has been awarded \$900.00 for return of double the security deposit and recovery of the filing fee. The tenant has been provided a Monetary Order in the amount of \$900.00 serve upon the landlord and enforce as necessary.

Although the landlord lost the right to claim against the security deposit and has been ordered to pay the tenant double, the landlord retains the right to pursue the tenant for damages or loss associated to the tenancy. The landlord's claims for such shall proceed August 13, 2012 under file no. 792897 unless rescheduled in accordance with the Rules of Procedure.

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: July 27, 2012.

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Residential Tenancy Branch