



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      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 and two agents for the landlord.

The landlord's agents testified the landlord had served the tenant and the Residential Tenancy Branch with evidence for this hearing. The tenant did not dispute receiving the landlord's evidence but there was no evidence in the file provided to me. However, based on the landlord's agent's description of the evidence, I am satisfied the parties have provided testimony that has provided all of the relevant components to make this decision and it is unnecessary to consider the landlord's documentary evidence.

### Issue(s) to be Decided

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

### Background and Evidence

The tenant testified the tenancy began on December 1, 2009 with, at the end of the tenancy, a monthly rent of \$375.00 due on the 1<sup>st</sup> of each month with a security deposit of \$212.50 paid and that the tenancy ended on June 30, 2012.

The tenant also testified that he provided the landlord with his forwarding address on June 30, 2012 and that on July 31, 2012 he received a cheque from the landlord for the amount of \$212.50.

The landlord's agent testified that he understood the tenant had vacated the rental unit on June 27, 2012 and that he had arranged with the tenant to attend a move out condition inspection on June 28, 2012 but that the tenant did not attend and provided the keys to the rental unit and his forwarding address on July 1, 2012.

The tenant acknowledged having a discussion with the landlord that it was not necessary to have a move out inspection because they were not re-renting the unit out to another tenant.

The landlord submits that despite the fact that the tenant did not attend the move out inspection and therefore the extinguishment of his right to return of the deposit the landlord did return the deposit.

The landlord submits the reason for the delay was that they had a discrepancy in the records as to the amount of the security deposit paid to the previous landlord and sought out clarification from a local agency that had access to these records. The landlord's agent testified that once they received the clarification they provided the tenant with the full 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.

Section 38(2) states that 38(1) does not apply if the tenant's right to the return of a security deposit has been extinguished under Section 36(1) [tenant fails to participate in end of tenancy inspection].

Section 36(1) states that the right of a tenant to the return of a security deposit is extinguished if the landlord has complied with Section 35(2) [2 opportunities for inspection] and the tenant has not participated on either occasion. Section 35(2) states the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

The term "as prescribed" refers to the prescribed requirements provided under the Residential Tenancy Regulation. Section 17 of the Regulation states if the tenant is not available at a time offered the landlord must propose a second opportunity by providing the tenant with a notice in the approved form. The approved form is available on the Residential Tenancy Branch website and is called "Notice of Final Opportunity to Schedule a Condition Inspection".

From the landlord's agent's testimony I accept the tenant did not attend the move out inspection as discussed verbally but I also find the landlord failed provide the tenant with a Notice as required to comply with the requirements of Section 17 of the Regulation and thus with Section 35(2) of the *Act*. As the tenant's right to return of the deposit is extinguished if the tenant fails to attend the inspection **and** the landlord has complied with 35(2), I find that because the landlord did not comply with Section 35(2) the tenant has not extinguished his right to return of the deposit.

In addition, despite the landlord's agent's testimony that it took them some time to contact the third party agency for clarification of their records as to the amount of security deposit owed to the tenant, I find no exemption or extensions are allowed under Section 38(1) and as such the landlord had until no later than July 16, 2012 to return the security deposit or file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlord did not return the deposit to the tenant, in full, until July 31, 2012, I find the landlord has failed to comply with Section 38(1) and as I have found the tenant has not extinguished his right to the return of the deposit I find that Section 38(1) is applicable in the case before. As a result and pursuant to Section 38(6), I find the tenant is entitled double the amount of the security deposit.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$212.50** comprised of double the amount of the security deposit less \$212.50 already returned to the tenant.

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: September 05, 2012.

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Residential Tenancy Branch