



# 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 pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double her security deposit as a result of the landlord's failure to comply with the provisions of section 38.

The landlords did not attend this hearing, although I waited until 3:16 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The tenant and her legal advocate attended the hearing and were given a full opportunity to be heard, to present evidence, to give sworn testimony and to make submissions. The tenant's legal advocate testified that she sent both landlords a copy of the tenant's dispute resolution hearing package by registered mail on June 20, 2012. She provided the Canada Post Tracking Numbers and said that Canada Post's Online tracking system reveals that both packages were delivered at 10:59 a.m. on June 21, 2012. I am satisfied that these packages were served to the landlords in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

The tenant gave sworn testimony that this periodic tenancy commenced on September 1, 2011. She said that monthly rent was set at \$650.00, payable in advance on the first of each month. She testified that the landlords continue to hold her \$300.00 security deposit paid on September 1, 2011.

The tenant provided written evidence that ended her tenancy on February 24, 2012, following a fire at the rental property where she had been residing. She entered into written evidence a copy of the April 30, 2012 letter that she sent to Landlord JA requesting the return of her security deposit to the forwarding address identified in her letter. She testified that she has not received any portion of her security deposit from the landlords. Her application for a monetary award of \$600.00 was for double her

security deposit due to the landlords' alleged failure to return her security deposit in full within 15 days of receiving her forwarding address in writing.

### Analysis

38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the evidence is that the tenant provided one of the landlords with a forwarding address in writing on April 30, 2012. Pursuant to section 90 of the *Act*, the tenant's forwarding address was deemed to have been received by the landlord on May 5, 2012, the fifth day after its mailing.

I find that the landlords have not returned the security deposit within 15 days of deemed receipt of the tenant's forwarding address. There is no evidence that the landlord has either applied for dispute resolution within 15 days of receipt of the tenant's forwarding address, nor have the landlords obtained the tenant's written authorization to retain any portion of that deposit. The tenant is therefore entitled to a monetary order of \$600.00, amounting to double her security deposit with interest calculated on the original amount only. No interest is available over this period.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$600.00, which allows the tenant to recover her original \$300.00 security deposit plus an equivalent monetary award of \$300.00, arising out of the landlords' failure to comply with the provisions of section 38 of the *Act* with respect to the return of her security deposit. The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 11, 2012

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Residential Tenancy Branch