



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for double her security deposit.

The tenant gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The tenant affirmed that she served the landlord with notice of the hearing via registered mail on June 25, 2012 at 3:30 p.m. and provided a tracking number as evidence. The tenant stated that the registered mail package was address to the landlord and named both the landlord and the company name of the landlord, the address of which is the same. The tenant stated that the package was not claimed by the landlord.

According to the *Act*, documents served by registered mail are deemed served five days after the date the documents are mailed. I find the landlord was served with notice of the hearing on June 30, 2012 based on the undisputed testimony of the tenant.

### Preliminary Matter

During the hearing, the tenant requested to reduce her monetary claim from \$925.00 to \$462.50 as she received a cheque from the landlord on June 27, 2012, in the amount of \$462.50. The tenant confirmed that she was seeking a monetary order for double her security deposit as her security deposit was not returned within 15 days of the end of tenancy in accordance with the *Act*, which leaves a balance owing of \$462.50.

### Issue to be Decided

- Did the landlord breach section 38 of the *Act* resulting in double the security deposit being owed to the tenant?

### Background and Evidence

The tenant paid a security deposit of \$462.50 on May 1, 2011. The tenant vacated the rental unit on May 31, 2012. The tenant provided the landlord with a written notice of the forwarding address to return the security deposit to on April 25, 2012 via registered mail, and did not sign over a portion of the security deposit.

The testimony of the tenant was that the landlord did not perform either incoming or outgoing condition inspection reports. The tenant stated that she did not receive a cheque from the landlord until June 27, 2012 in the amount of \$462.50.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, **I find** that the landlord has breached of section 38 of the *Act*.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

By failing to perform incoming or outgoing condition inspection reports, **I find** the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from a Dispute Resolution Officer, or the written agreement of the tenant. In the matter before me, **I find** the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security to the tenant within 15 days in accordance with the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the *Act*, that the landlord pay the tenant the balance of **\$462.50**, comprised of double the security deposit on the original amount held of \$462.50 for a total of \$925.00 less \$462.50 which was returned late by the landlord and received by the tenant on June 27,

2012. The landlord should have returned the tenant's security deposit within 15 days of May 31, 2012, which was the date the tenant vacated the rental unit, or filed for dispute resolution in accordance with the *Act*.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2012

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Residential Tenancy Branch