



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants application for a Monetary Order for double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of 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 September 22, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?
- Is the tenant entitled to a monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The tenant testifies that this tenancy started on August 01, 2011 for a fixed term tenancy which was due to expire on July 31, 2012. Rent for this unit was \$1,100.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$550.00 in the middle of July, 2011. The tenant gave the landlord a forwarding address in writing on August 22, 2012. A copy of this letter has been provided in evidence.

The tenant testifies that the landlord sent the tenant an e-mail dated February 18, 2012 giving the tenant three months notice to move out on June 01, 2012. The tenant gave the landlord a 10 Day Notice to Move out on April 16, 2012 after the tenant received this e-mail. The tenant moved from the rental unit on May 01, 2012 and the landlord moved into the unit on April 30, 2012 before the tenant had fully vacated.

The tenant testifies that the landlord did not give the tenant compensation equivalent to one month's rent for the Notice to End Tenancy. The tenant agrees the landlords Notice to End Tenancy was not a legal notice but rather just by e-mail. The tenant seeks to recover compensation from the landlord of one month's rent to the sum of \$1,100.00 because the landlord ended the tenancy.

The tenant testifies that the landlord has not returned the tenants security deposit within 15 days of receiving the tenants forwarding address. The tenant therefore seeks to recover double the security deposit to the sum of \$1,100.00.

### Analysis

The *Residential Tenancy Act* s. 38 states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date

the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on May 01, 2012 and the landlord had a forwarding address in writing by August 22, 2012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished. Therefore the tenant has established a claim for double the security deposit to the sum of **\$1,100.00** pursuant to s. 38(6)(b) of the Act.

With regard to the tenants claim for compensation for the landlords Notice to End Tenancy; the tenant agrees that this Notice was not a legal notice therefore as this was a fixed term tenancy the landlord was not entitled to end the tenancy before the end of the fixed term and the tenant did not have to move from the rental unit and could have filed an application to dispute the landlords Notice. As it was the tenant's choice to move from the unit I find the tenant is not entitled to compensation the sum of \$1,100.00 and this section of the tenants claim is dismissed without leave to reapply.

As the tenant has been partially successful with her claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the Act.

### Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,150.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: December 11, 2012.

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Residential Tenancy Branch