



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### 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.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 15, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

### 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; compensation for bank charges and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on September 1, 2011 for a 1 year fixed term tenancy beginning on October 1, 2011 for the monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,500.00 paid.

The tenant clarified in her testimony that while she had originally paid \$1,500.00 for the security deposit she recovered \$750.00 of that during the tenancy as this amount was in excess of what the *Act* allowed the landlord to collect as a deposit. The tenant testified the tenancy ended when she vacated the rental unit by September 29, 2012.

The tenant provided documentary evidence confirming that she had attempted to deposit the cheque provided by the landlord in the amount of \$750.00 dated October

14, 2012 and that the bank returned the cheque as the account it was written on was closed.

### 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.

As the tenancy ended at least by September 30, 2012, I find the landlord had until October 15, 2012 to return the tenant's security deposit in full. From the undisputed testimony and evidence of the tenant I find the action of the landlord issuing a cheque on a closed account for returning the security deposit has the same effect as not providing the tenant her security deposit at all. As such, I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the security deposit in accordance with Section 38(6).

Further as the tenant incurred bank charges for the landlord's issuance of a cheque on a closed account I find the tenant is entitled to the \$20.00 charge she paid.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,570.00** comprised of \$1,500.00 double security deposit; \$20.00 bank charges; and the \$50.00 fee paid by the tenant for this application.

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: February 14, 2013

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Residential Tenancy Branch