



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing the Landlord requested an adjournment in order to file evidence of damages to the unit. The Landlord states that notification of the hearing was not received by the Landlord until last week following a call from the Tenant’s boyfriend. The Landlord states that the Tenant had sent mail to him at the dispute address where he does not reside and that he resides in Seattle. The Landlord states that he owns the house containing the unit and has tenants in the unit but that he did not receive any mail that was sent to this address. The Landlord states that the Tenant was given his business card that has his business mailing address.

The Tenant confirms that the application and notice of hearing was served on the Landlord to the dispute address as the Tenant had no other address to send mail. The Tenant states that the Landlord never provided her with an address in Seattle. It is noted that the tenancy agreement does not include an address for the Landlord. The Tenant states that during the tenancy her contact with the Landlord was through phone calls, emails and texting and that he was frequently at the dispute address. The Tenant

states that the Landlord replied to her email or text on January 22, 2013 in relation to the hearing and states that the Landlord knew about the Hearing at that date.

Considering that the Landlord has attended the Hearing, given that the Landlord seeks an adjournment in order to provide evidence related to a claim against the Tenant for which the Landlord has not made an application, I find that the Landlord is not entitled to an adjournment.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy with two Tenants started in one unit of a house on January 9, 2012 and on February 28, 2012 the Tenants moved into another unit of the house until May 3, 2012 when the Tenant moved out of the unit. Rent of \$650.00 was payable monthly. At the outset of the tenancy the Landlord collected \$375.00 from each of the Tenants. No move-in or move-out condition inspection report was completed.

The Tenant states that she sent her forwarding address by mail to the Landlord at the dispute address and followed up with texts and emails. The Landlord states that he did not receive the Tenant's forwarding address and that he is not sure what the Tenant sent by text or email. It is noted that copies of text messages provided as evidence by the Tenant include the Landlord's response to the Tenant's request for return of the security deposit and the provision of her forwarding address and indicates that the Landlord offered to mail the Tenant the funds. The Tenant restricts her claim to double the \$375.00 paid by the Tenant and does not claim the security deposit paid by the other tenant. The quantum of the Tenant's claim is \$750.00.

### Analysis

Section 88 of the Act provides that documents such as a forwarding address may be sent by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord. Given the evidence of the Tenant that her forwarding address was sent to the dispute address and the Landlord's evidence that he continues to rent that address out, and noting the confirmation of the Landlord in the texts that he has the Tenant's forwarding address, I find that the Landlord received the Tenant's forwarding address as required under the Act at least by August 14, 2012.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the \$375.00 portion of the security deposit plus zero interest in the amount of **\$750.00**. AS the Tenant has been successful with the application I also find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$800.00**.

### Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$800.00**. If necessary, this order may be filed in the Small Claims Court and 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: January 30, 2013

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Residential Tenancy Branch

