



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on December 3, 2012. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

The landlord testified that he received a copy of the tenant's written evidence package. The tenant's written evidence was also served in accordance with the *Act*.

The landlord provided written evidence that his attempt to send the tenant a copy of his (the landlord's) written evidence package was unsuccessful because his letter to the tenant at the address identified as the tenant's address for service of documents was returned as unclaimed. The landlord noted that the address identified on the tenant's application for dispute resolution as well as the tenant's November 9, 2012 request for the return of his security deposit was the dispute address. The parties agreed that the tenant vacated the rental unit at the dispute address by November 1, 2012. The tenant confirmed that he had not received any written evidence from the landlord, but has continued to receive mail forwarded by Canada Post to that address. In accordance with sections 88 and 90 of the *Act*, I find that the landlord's written evidence was deemed served to the tenant on the fifth day after its registered mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy commenced on either May 13, 2006 or May 15, 2006, the two dates identified on two separate Residential Tenancy Agreements entered into written evidence by the parties. Monthly rent of \$875.00 was due by the 15<sup>th</sup> of each month, payable in advance. The landlord continues to hold all of the tenant's \$875.00 security deposit paid on May 15, 2006. The landlord realizes that he erred in charging more than one-half month's rent for the security deposit.

The parties agreed that this tenancy ended on the basis of the tenant's oral notice to end this tenancy by November 1, 2012. The parties agreed that the tenant did not issue a written notice to end this tenancy. The landlord said that he sold this property in mid-November 2012. The parties agreed that the tenant did not pay any rent for November 2012.

The landlord confirmed that by November 12, 2012, he had received the tenant's November 9, 2012 letter requesting a return of what the tenant identified as his \$490.00 security deposit. In identifying this amount, the tenant said that he realized that he owed the landlord some money from this tenancy.

The tenant's application for a monetary award of \$1,750.00 included a request for a return of double his actual security deposit. He requested this amount because the landlord had allegedly failed to comply with the provisions of section 38 of the *Act* with respect to the return of his security deposit. He also requested the recovery of his \$50.00 filing fee.

The landlord entered written evidence that he attempted to reach a mutual agreement regarding the tenant's security deposit by sending a letter to the tenant at the mailing address provided to him by the tenant for the return of that deposit. The landlord confirmed that he did not return the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address, did not apply for dispute resolution within that time period, and did not obtain a written agreement from the tenant to retain any portion of the landlord's security deposit.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues arising out of the tenant's application for dispute resolution and this tenancy on the basis of the following final and binding resolution:

1. The landlord agreed to send the tenant a cheque or negotiable money order for \$1,254.50 by Monday, March 11, 2013.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute arising out of this tenancy and further agreed that neither party will initiate any further proceedings of any type arising out of this tenancy.

### Conclusion

In order to implement the above settlement reached between the parties and as discussed at the hearing, I issue a monetary Order in the tenant's favour in the amount of \$1,254.50. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. 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 after it becomes evident that the landlord has failed to comply with the terms of the above settlement agreement. 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: March 07, 2013

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Residential Tenancy Branch

