



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, O

### 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 and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in February 2010 for a monthly rent of \$1,450.00 due in part payments on the 1<sup>st</sup> and 15<sup>th</sup> of each month with a security deposit of \$725.00 paid. When the tenancy ended on November 1, 2013 the rent was \$1,456.00.

The parties agree that neither a move in nor a move out Condition Inspection was completed with both parties present. The landlord submits he completed an Inspection a couple of days after the tenant moved out because he was not available at the time the tenant contacted him to see if he could attend the unit and complete the inspection.

The tenant first testified that she thought she had provided her forwarding address to the landlord through his agent at the end of the tenancy but then later, upon reflection, changed her testimony to indicate that she was not sure if she had provided it or not and eventually stated that she likely did not provide the forwarding address.

The landlord submits he first received the tenant's forwarding address when he received the tenant's Application for Dispute Resolution sometime in late January but no later than January 31, 2013.

The landlord has submitted evidence in support of his reasons for not returning the deposit which included photographic evidence and receipts showing that he had to have

the rental unit painted due to smoking in the unit despite the addendum to the tenancy agreement that included a no smoking clause.

### 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.

Regardless of the landlord's submission that the cost to re-paint the rental unit exceeded the security deposit by almost double the landlord confirmed that he has not submitted an Application for Dispute Resolution seeking to claim against the deposit.

As such and combined with the landlord's testimony that he received the tenant's forwarding address when he received her Application and Notice of Hearing documents in late January I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit.

I note, however, this does not preclude the landlord from filing an Application for Dispute Resolution seeking compensation for any damage to the rental property in accordance with the *Act*.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,450.00** comprised of double the amount of the security deposit.

This order must be served on the landlords. If the landlords fail 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: April 17, 2013

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Residential Tenancy Branch