



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNR, MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit, the cost of emergency repairs, and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the tenant entitled to compensation for replacement of a dryer in the sum of \$200.00?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on April 1, 2012; a deposit in the sum of \$1,600.00 was paid. The parties agreed that the tenancy ended on March 31, 2013.

The parties agreed that the tenant provided a forwarding address, sent via text message on April 3, 2013. On April 12, 2013 the landlord responded that he would send the cheque on Monday. The parties had a history of communicating via text message; a copy of the messages was supplied as evidence.

There was no dispute that the address sent on April 3, 2013 contained an incorrect postal code.

The landlord said he used the address provided, to mail the tenant a cheque but that the mail was returned, marked by Canada Post as a wrong address.

The tenant said that the landlord was sent messages asking for the deposit and that the landlord knew where they lived and could have delivered the cheque. The tenant had not known the address they gave was incorrect.

The landlord did go to the tenant's home on May 3, 2013 and provided the tenant with a cheque in the sum of the deposit plus \$200.00 for the dryer. The tenant has yet to cash the cheque. A copy of the cheque was supplied as evidence.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the tenant did supply the landlord with an address that was incorrect and that the landlord did return the deposit to the address provided. It is not up to the landlord to then seek the tenant out; whether there was contact between the parties after the address was given, or not; the landlord was not provided with the correct address.

The landlord did make an effort to attend at the tenant's home to return the deposit and even though this was outside of the fifteen day time period when the tenancy ended, I find that section 38(6) of the Act cannot be imposed as the original delivery failure was not the fault of the landlord.

Therefore, I find that the tenant is entitled to return of the \$1,600.00 security deposit, plus the cost of the dryer, in the sum of \$200.00. This was not in dispute; the landlord agreed the tenant was entitled to the dryer cost.

I find that the balance of the claim requesting double the security deposit is dismissed

A monetary Order has been issued to the tenant, for enforcement in the event the cheque issued on May 3, 2013 cannot be negotiated. If enforcement of the Order through Small Claims Court is required the tenant will need to present evidence from the financial institution that the cheque was not able to be successfully negotiated and that the cheque is void. If the cheque is successfully negotiated then the monetary Order will be of no force or effect.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,800.00.

As the matter had essentially been settled and the tenant is not entitled to return of double the security deposit I declined filing fee costs to the tenant.

Conclusion

The tenant is entitled to return of the \$1,600.00 security deposit and \$200.00 for the cost of a dryer.

A monetary Order has been issued for enforcement should the cheque the tenant holds not be negotiable.

The balance of the claim is dismissed.

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: July 25, 2013

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Residential Tenancy Branch

