



# 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 tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the tenants only.

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 October 18, 2013 to the address obtained by the Land Titles office 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 Section 71 to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit; for costs associated to file this claim 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 submits that the tenancy began on February 1, 2013 as a 7 month and 1 day fixed term tenancy for the monthly rent of \$1,700.00 due on the 1<sup>st</sup> of each month. The tenant submits that they paid a security deposit in the amount of \$1,700.00 when they entered into the tenancy agreement.

The tenant submits the tenancy ended on September 1, 2013 and that a few days later she provided the landlord with her forwarding address by mail. The tenant seeks her costs for land title search and registered mail costs.

### 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.

Based on the undisputed testimony of the tenant I cannot determine the exact date the tenant provided her forwarding address. However if I allow that she provided it to the landlord by mail on or before September 15, 2013 and then allowed another 5 days for the landlord to receive the mail I find the earliest the landlord would have received the forwarding address is September 20, 2013.

As such, the landlord would have received the tenants' forwarding address before September 30, 2013 and should have either returned the deposit or filed an Application for Dispute Resolution seeking to retain a portion of the deposit.

I accept the tenant's testimony that she has not received the returned security deposit and I confirm that the landlord has not filed an Application for Dispute Resolution seeking to claim against the deposit to this date. I therefore find the landlord has failed to comply with the requirements under Section 38(1) and the tenants are entitled to return of double their deposit. As to the costs associated with filing her claim I dismiss this portion of the tenants claim as her own costs.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,450.00** comprised of \$3,400.00 double the amount of the security deposit 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 tenants 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: January 27, 2014

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Residential Tenancy Branch

