



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### 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

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 1, 2014 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

The tenant acknowledged that the hearing documents were returned to the tenant as unclaimed. I find the landlord's failure to accept the hearing documents as a deliberate attempt to avoid service.

Based on the above, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

While the Application for Dispute Resolution named two tenants as applicants I note that the tenancy agreement submitted into evidence identified only one of the named applicants as a tenant. As such, I find that the second named applicant was not a party to this tenancy and I have amended the tenant's Application to exclude the second named applicant.

### Issue(s) to be Decided

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

### Background and Evidence

The tenant has submitted into evidence a copy of a tenancy agreement signed by the parties on October 14, 2010 for a month to month tenancy beginning on November 1, 2010 for the monthly rent of \$650.00 due on the 1<sup>st</sup> of each month with a security deposit of \$325.00 paid.

The tenant submitted the tenancy ended when she vacated the rental unit on September 1, 2014. The tenant also submitted that she provided the landlord with her forwarding address in writing on September 4, 2014 by leaving it in his mailbox. The tenant submits that she has not received her security deposit back.

### 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.

Allowing 3 days for the tenant's forwarding address to be received I find the landlord received the letter with the tenant's forwarding address on September 7, 2014. As such, I find the landlord had until September 22, 2014 to either return the deposit or file an Application for Dispute Resolution to claim against it.

As there is no evidence before me that the landlord filed an Application for Dispute Resolution to claim against the security deposit and the tenant submits that she has not received her deposit back as of the date of this hearing, I find the landlord has failed to comply with Section 38(1).

Therefore, I find the tenant is entitled to return of double the amount of the security deposit pursuant to Section 38(6).

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$650.00** comprised of double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails 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: May 04, 2015

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Residential Tenancy Branch

