



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASTERA PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit and recovery of the filing fee. The landlord did not appear at the hearing. I was provided evidence that the hearing package was sent to the landlord via registered mail on September 7, 2017 and the evidence package was sent to the landlord on February 8, 2018. The hearing package and the evidence package were successfully delivered. I was presented evidence that on March 2, 2018 the landlord sent a cheque to the Executor in the amount equivalent to double the security deposit. The Executor stated she has not yet cashed the cheque and sent the landlord a registered letter to advise the landlord that she intends to proceed with the hearing. I was satisfied that the landlord has been duly served with notification of this proceeding and I continued to hear from the applicant without the landlord present.

The tenant of the rental unit is deceased. This application was filed by the Executor of the tenant's estate. Under section 1 of the Act, the definition of "tenant" includes the estate of a deceased tenant. Accordingly, reference to "tenant" in this decision may refer to the deceased tenant, the estate of the deceased tenant, or the personal representative of the estate.

### Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Recovery of the filing fee.

### Background and Evidence

The landlord and the tenant executed a tenancy agreement on May 5, 2010 for a tenancy that started on March 1, 2010. The tenant participated in a move-in inspection

of the rental unit and signed a move-in inspection report dated May 4, 2010. The tenancy agreement reflects a security deposit of \$382.50 was paid on February 5, 2010.

The tenant died on January 8, 2017. The Executor of the tenant's estate gave the landlord notice to end tenancy dated January 28, 2017 to be effective at the end of February 2017.

The landlord and the Executor participated in a move-out inspection with the landlord on February 23, 2017. The Executor returned the keys to the landlord and a move-out inspection report was prepared. The Executor provided a forwarding address in writing on the move-out inspection report. The Executor did not provide any written authorization for the landlord to make deductions or retain the security deposit.

The landlord and the Executor were in communication with respect to return of the security deposit and a stain in the carpeting after the tenancy ended but there was no agreement that the landlord may retain the security deposit. The landlord did not file an Application for Dispute Resolution to claim against the security deposit and did not refund the security deposit before the Executor filed this Application for Dispute Resolution on September 1, 2017.

The applicant seeks return of double the security deposit and recovery of the filing fee paid for this application. The Executor has received a cheque in the amount of \$765.00 on March 6, 2018 but she has not cashed it. Since the filing fee was not recovered from the landlord the Executor informed the landlord via registered letter that she was proceeding with this hearing.

### Analysis

As provided in section 38 of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based upon the unopposed evidence before me, I am satisfied the landlord had been provided the tenant's forwarding address in writing on February 23, 2017 when

possession of the rental unit was returned to the landlord and the move-out inspection report was completed. I was not provided any information to suggest the tenant extinguished her right to return of the security deposit; and, the tenant did not authorize the landlord to retain the security deposit in writing. Accordingly, I find the landlord failed to take sufficient action to either refund the security deposit or file an Application for Dispute Resolution to claim against it within 15 days of February 23, 2017. Therefore, I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit, or \$765.00.

As the tenant was successful in this Application, I further award recovery of the \$100.00 filing fee to the tenant.

In light of the above, I provide the tenant with a Monetary Order in the total amount of \$865.00 to serve and enforce upon the landlord.

As I advised the Executor during the hearing, she is at liberty to cash the cheque already sent to her by the landlord and enforce the balance of the Monetary Order if it remains unpaid by the landlord.

### Conclusion

The tenant has been provided a Monetary Order in the sum of \$865.00 for return of double the security deposit and recovery of the filing fee to serve and enforce upon the landlord.

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 20, 2018

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Residential Tenancy Branch