



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit.

Although the Tenant did not provide a copy of the registered mail receipt, her testimony indicated that service of the hearing documents to the Landlord was done in accordance with section 89 of the *Act*, via registered mail on September 29, 2010. The Landlord submitted evidence, dated October 1, 2010, which included a copy of the Notice of Hearing letter. Thus I am satisfied that the Landlord was served in the time and manner in accordance with the *Residential Tenancy Act*, but did not appear at the hearing.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act* (the "Act")?

### Background and Evidence

This tenancy ended on September 1, 2010, and a security deposit of \$340.00 was paid at the beginning of the tenancy.

The Tenant supplied evidence and gave affirmed testimony that she provided the Landlord her written forwarding address, on July 28<sup>th</sup> or 29<sup>th</sup> 2010, when she included the written notice in with the August 2010 rent. The Tenant testified that she dropped the notice and rent through the office mail slot as she did every other rent cheque during the tenancy.

The Tenant further stated that she had a move out inspection on September 1, 2010, and verbally reaffirmed the forwarding address with the Landlord's Agent.

In their absence, the Landlord submitted a copy of a cheque for \$340.00 sent to the Tenant on October 1, 2010, along with a letter to the Tenant stating she did not supply a forwarding address. A written statement from the Landlord indicated they would not attend the hearing.

The Landlord has not filed for Dispute Resolution.

### Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant bears the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence and testimony supports that the Tenant provided the Landlord with her forwarding address on July 28 or 29, 2010, by leaving a copy in the mail slot, with the Landlord's Agent.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than September 16, 2010.

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing them to keep the security deposit, and does not have the Tenant's written consent to retain the security deposit.

Based on the above, I find that the Landlord failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

In the absence of proof from the Landlord, I find that the Tenant has succeeded in proving the test for damage or loss as listed above.

Conclusion

I find that the Tenant is entitled to a monetary order as follows:

Doubled Security Deposit owed (2 x \$340.00)	\$680.00
Less amount paid by the Landlord	<u>(\$340.00)</u>
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$340.00</b>

Pursuant to the policy guideline, I have provided the Tenant with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and 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 28, 2011.

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Residential Tenancy Branch