



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for return of her security deposit. Both parties appeared at the hearing and provided the opportunity to be heard.

I heard that the tenant had sent the hearing package to the landlord by registered mail and it was returned to her as unclaimed. The landlord acknowledged receiving registered mail notification cards but explained that he was away on vacation and the package was returned before he could pick it up from the post office. The landlord learned of this hearing after calling the Residential Tenancy Branch. The landlord indicated that he was aware that the tenant was seeking return of her security deposit and the landlord stated he was prepared to deal with the matter during this hearing. I was satisfied the tenant sufficiently served the landlord with notification of this hearing and I accepted the documents submitted by the landlord into evidence. Taking into account the landlord had not picked up the tenant's evidence package I reviewed the documents with the landlord and provided him the opportunity to respond to them.

I was also satisfied the landlord served his documents upon the tenant and I accepted those documents into evidence.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of her security deposit?

### Background and Evidence

On November 19, 2010 the parties participated in a dispute resolution proceeding to deal with the landlord's application for a Monetary Order, including authorization to retain the tenant's security deposit. The Dispute Resolution Officer (DRO) provided the landlord with a Monetary Order in the amount of \$742.85 on November 19, 2010; however, the decision and Order issued on November 19, 2010 did not include any finding or order with respect to disposition of the security deposit.

On March 8, 2011 the landlord filed the Monetary Order in Provincial Court (Small Claims) to enforce payment. The total amount due to the landlord on the Summons to a Payment Hearing, taking into account a partial payment by the tenant the landlord's filing fee, was calculated as \$726.15. The tenant paid the landlord \$726.15 by way of a cheque dated June 4, 2011 and the court recorded the payment "in full satisfaction of the judgement dated November 19, 2011 (sic)" on June 13, 2011.

On June 29, 2011 the DRO amended the decision and provided the landlord with an amended Monetary Order in the amount of \$255.35 upon realizing his original decision did not address disposition of the security deposit. By way of the amended decision the landlord was granted authority to retain the \$487.50 security deposit and received an amended Monetary Order in the amount of \$255.35.

### Analysis

Upon consideration of the documentary evidence and verbal testimony presented to me, I find the landlord was awarded compensation in the total amount of \$742.85 under file no. #####. I am satisfied the tenant has paid the landlord \$742.85 before the DRO provided an amended decision and Monetary Order. When the DRO authorized the landlord to retain the security deposit by way of the amended decision, the DRO reflected such authorization by reducing the amount of the Monetary Order by the amount of the security deposit ( $\$742.85 - \$487.50 = \$255.35$ ). Since the landlord had enforced and received full payment of the original Monetary Order, upon receipt of the amended decision and Monetary Order the landlord should have returned the security deposit to the tenant.

In light of the above, I find the tenant has established an entitlement to a Monetary Order for return of the security deposit and I award her the amount of the filing fee she paid for this application. I provide the tenant with a Monetary Order in the total amount of \$537.50 to serve upon the landlord and enforce as necessary.

### Conclusion

The tenant has been provided a Monetary Order in the amount of \$537.50 to serve upon the landlord and enforce as necessary.

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: October 11, 2011.

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Residential Tenancy Branch