



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, FF

### **Introduction**

This hearing was convened in response to an application under the Residential Tenancy Act (the Act) by the tenant for a Monetary Order for the return of the security deposit and compensation under section 38 for double the original deposit. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both parties attended the hearing and were given full opportunity to discuss their dispute and attempt to resolve it, present all relevant evidence and provide relevant sworn testimony in respect to the claims; and, to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the tenant entitled to double the security deposit amount claimed?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The onus is on the applicant (tenant) to prove their claim. There was considerable dispute as to the facts, and in respect to the evidence submitted in this matter.

The undisputed facts before me are as follows. The tenancy began on October 01, 2010 and ended on March 31, 2011. The rent payable was \$850 per month. The landlord collected a security deposit of \$425 at the outset of the tenancy and still retains it in full. There was no move out inspection conducted at the outset, as required by the Act and Regulations. There was no move out inspection conducted at the end of the tenancy according to the Act and Regulations, although the parties agree that they convened in the rental unit at the start and the end of the tenancy, but the results were not recorded by the landlord as required by Sections 23 and 35 of the Act. Regardless

of which, at the end of the tenancy the parties did not come to agreement as to how the security deposit would be administered.

The tenant testified that on March 31, 2011 they handed the landlord their written forwarding address on an index card. The tenant provided a “similar copy” of what they purportedly gave the landlord, into evidence. The landlord claims they did not receive the tenant’s forwarding address in the manner testified by the tenant, and have not received the tenant’s forwarding address. The tenant did not provide other supporting evidence to their testimony.

### **Analysis**

The burden of proof in this matter lies with the applicant. On preponderance of the relevant evidence, and on the balance of probabilities, I have reached a decision.

*Full versions of the Act, Regulations and Residential Tenancy Policy Guidelines are available at [www.rto.gov.ca](http://www.rto.gov.ca).*

**Section 38** of the Act provides, in part, as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

In this matter I find the tenant's testimony regarding provision of the forwarding address as ambiguous and not sufficiently supported – which is not to say that I prefer the landlord's testimony. Rather, the burden of proof lies with the applicant / tenant to prove their claim, and I find that they have not. Therefore, I find the tenant **is not** entitled to the doubling of the original amount provisions as per Section 38 of the Act.

I further find that the landlord did not comply with Sections 23 and 35 of the Act, therefore, the landlord's right to claim the security deposit is extinguished (they are unable to make a claim for it). Residential Tenancy Policy Guideline #17, in part, states as follows:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

As a result of all the above, as the landlord's right to claim the deposit has been extinguished and may not keep, it is only appropriate that I order the landlord to return the original deposit to the tenant in the full amount of **\$425**. The tenant is further entitled to recovery of the **\$50** filing fee for this application for a total entitlement of **\$475**.

The parties were advised during the hearing that the landlord retains the right to file a monetary claim for damage or loss arising under the tenancy, including damages to the rental unit.

#### **Conclusion**

I grant the tenant a Monetary Order under section 67 for the sum of **\$475**. If necessary, this order may be filed in the Small Claims Court 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: November 09, 2011.

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Residential Tenancy Branch