# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## Decision

**Dispute Codes**:

MNSD

**Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit and the pet damage deposit retained by the landlord.

Both the landlord and the tenant appeared and each gave affirmed testimony.

**Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the landlord's failure to return the portion of security deposit payable within the 15-day deadline under the Act.

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of double the security and pet damage deposit pursuant to section 38 of the Act.

**Background and Evidence**

The landlord testified that the tenancy began in July 2011, 2008, at which time a security deposit of $425.00 and pet damage deposit of $50.00 were paid and the tenancy ended on November 30, 2011.

The tenant submitted into evidence, proof that written notification of the forwarding address was sent to the landlord in a letter dated January 13, 2012. According to the tenant, this communication was addressed to the landlord asking for the return of the security deposit and pet damage deposit. The tenant also agreed to have utility charges deducted in the amount of $68.75, leaving $406.25 still owed.

The tenant testified that, despite repeated phone calls to the landlord and messages left, the landlord did not contact the tenant nor return the deposits. The tenant testified that the landlord had mentioned to them in the past that their deposit would not be returned. The tenant testified that because the remaining funds were not returned, they filed for dispute resolution on February 2, 2012 seeking a refund of double the deposit.

The tenant testified that after the application was made and served on the landlord, the landlord returned the remaining portion of the security deposit on February 17, 2012, by depositing $406.25 directly into the tenant's bank account.

However, according to the tenant, the landlord had already wrongfully retained the security deposit beyond 15 days from when the tenant's forwarding address was provided, and therefore the tenant feels that they are entitled to double the deposit, for an additional claim of $475.00 under the Act.

The landlord acknowledged that the tenant had provided a forwarding address and testified that on January 20, 2012 a cheque for $406.25 was mailed to the tenant. The landlord provided a copy of the cheque. However, portions of the date and details were unclear on this document. The landlord testified that the tenant failed to acknowledge or cash this cheque sent to the tenant. The landlord testified that, on February 17, 2012, the landlord placed an official "stop pay" on the cheque and instead deposited the security deposit funds of $406.25 directly in the tenant's account at that time.

The landlord testified that at that time, they were not yet aware that the tenant had already filed for dispute resolution on February 2, 2012, nor did they know that the tenant was seeking the return of double the deposit.

## Analysis

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit does not exist.

Without the tenant's written agreement, a landlord can only keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord obtains an order retain the amount. However, in order to make a claim against the deposit , the application for dispute resolution must be filed within 15 days after the forwarding address was received. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In regard to the landlord's claim that a cheque for $406.25 was sent on January 20, 2012 and was not cashed by the tenant, I find that this testimony was disputed by the tenant. I find that the landlord's submission into evidence of a copy of a cheque with information consistent with the landlord's claim, was not sufficient to prove that the funds were actually mailed to the tenant on January 20, 2012.

I also find that the document in evidence verifying that on February 17, 2012, the landlord had placed a stop-pay on a cheque only proves that the landlord submitted this request to their bank. I find that this would not function as irrefutable proof that the landlord had sent a cheque to the tenant particularly in the face of the tenant's denial that any cheque was ever received.

In the matter before me, I find that under section 38, the tenant is entitled to be paid double the security deposit wrongfully retained by the landlord, totalling an additional $475.00 plus the $50.00 cost of the application.

## Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to additional compensation of $525.00and hereby issue a monetary order for this amount in favour of the tenant. This order must be served on the Respondent and 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: April 02, 2012.

Residential Tenancy Branch