

## **DECISION**

**Dispute Codes**      MNSD

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for return of the security deposit.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

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

Are the tenants entitled to return of the security deposit?

### **Background and Evidence**

This fixed term tenancy began on December 15, 2009 and was to expire on March 31, 2010, however the tenants vacated the residence on January 31, 2010.

Rent in the amount of \$1,450.00 was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$725.00.

The tenants both testified that on January 31, 2010 the landlord was given their forwarding address in writing personally, and at that time, they asked for return of the security deposit. The landlord told them he was going to deduct some portion but didn't say how much or what for. They further testified that they never received any portion of that deposit back and did not authorize the landlord to retain any part of it.

The landlord did not dispute the testimony of the tenants and testified that the tenants over-held the unit past noon on January 31, 2010, and stated that he made an application for dispute resolution on February 13 or 15, but has no file number and no hearing date.

## **Analysis**

I accept the evidence of the tenants that the landlord did not serve them with an application for dispute resolution, and that the landlord has not returned any portion of the security deposit.

Further, I find that the landlord's testimony lacks veracity, and the landlord's evidence of over-holding is not accepted.

The *Residential Tenancy Act* states:

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

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

The landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, the Act states at subsection (6):

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

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenants gave their forwarding address in writing to the landlord on January 31, 2010 and the landlord did not return the security deposit, and did not make an application for dispute resolution within the 15 days required under the *Act*. Therefore, I

have no discretion under the *Act* but to order that the landlord pay the tenants double the amount of that security deposit.

**Conclusion**

I hereby order that the landlord pay to the tenants the amount of \$1,450.00. The tenants are also entitled to recover the filing fee from the landlord for the cost of this application. I grant the tenants an order under section 67 for the balance due of \$1,500.00. 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: June 09, 2010.

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Dispute Resolution Officer