



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application for a Monetary Order for return of double the security deposit and pet deposit and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions in writing, orally, to respond to submissions of the other party and to ask questions. Both parties confirmed receipt of hearing documents served upon them.

### Issues(s) to be Decided

Are the tenants entitled to return of double the security deposit and pet deposit?

### Background and Evidence

The parties provided undisputed testimony as follows. On October 8, 2009 the tenants paid a \$1,750.00 security deposit and a \$1,750.00 pet deposit. The one-year fixed term tenancy was set to commence November 1, 2009 and expire on October 31, 2010. The tenancy agreement provided that the tenants were to pay rent of \$3,500.00 on the 1<sup>st</sup> day of every month. On March 30, 2010 the tenants delivered a letter to the landlord's office and the landlord received the tenants' letter. The tenants' letter served to inform the landlords that the tenants would be vacating the rental unit April 29, 2010 and provided a forwarding address for the tenants. The landlord and an agent for the tenants participated in a move-out inspection together and the landlord prepared a condition inspection report. Upon completion of the move-out inspection the landlords did not seek consent for deductions from the deposits and the tenants' agent did not

authorize any deductions from the deposits and the keys were returned to the landlords. The rental unit was subsequently re-rented.

The tenants made this application to request return of their deposits on May 20, 2010 and submitted that they have yet to receive a refund of their deposits despite numerous messages left for the landlord. Upon enquiry, the tenants stated that they do not waive any entitlement to double the security deposits.

The landlords made a written and verbal submission that the tenants cannot avoid the Act or the tenants' obligations under the tenancy agreement. The landlords submit that the tenants were not in a position to end the tenancy by way of the tenants notice to end the tenancy effective April 29, 2010 and that the effective date on the notice automatically changed to read October 31, 2010. The landlords submitted that the tenants abandoned the rental unit on April 29, 2010. The landlords were of the position that the tenancy, or the tenancy agreement, remains in effect until the expiry of the fixed term.

The landlords also submitted that the tenancy agreement was breached by the tenants when the tenants ended the tenancy before the expiration of the fixed term and that the landlords suffered a loss due to the tenants' breach. Furthermore, the landlords would not have to do anything with the deposits prior October 31, 2010 had the tenants not breached the tenancy agreement. The landlord suggested that the application of the Act and the provision for doubling of deposits was not equitable and that my decision should be based upon common sense.

Documentation considered in reaching this decision are the written submissions of each party and the tenants' letter informing the landlords they would be vacating the rental unit effective April 29, 2010.

### Analysis

Section 38 of the Act provides for the return of security deposits and pet deposits.

Section 38(1) provides as follows:

**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.

[my emphasis added]

Subsection (3) provides for a landlord's ability to withhold an amount from the security deposit or pet deposit that the tenant has been previously ordered to pay to the landlord. I was not provided evidence the tenants have been ordered to pay the landlord any amount and this subsection does not apply. Subsection (4) provides for a landlord's ability to withhold an amount from the security deposit or pet deposit where the tenant consents to such a deduction in writing. I heard the tenants' agent did not provide any written consent to the landlord for deductions from the security deposit or pet deposit and this subsection does not apply.

The landlord was of the position the tenancy, or tenancy agreement, remains in effect until the expiry of the fixed term. I find that in order to apply section 38(1) the date the

tenancy ended must be determined. Section 44 of the Act provides for how a tenancy ends.

Section 44 of the Act provides, in part,

**44** (1) A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit;

Based upon the submissions before me I am satisfied that on April 29, 2010 the rental unit was vacated, the keys were returned to the landlord and a move-out inspection was completed. Therefore, I find that the tenants vacated or abandoned the rental unit on April 29, 2010 and the tenancy came to an end on that date.

I am also satisfied that the landlord had received the tenants' forwarding address in writing before April 29, 2010. Accordingly, I find the landlords had 15 days from April 29, 2010 to return the security deposit and pet deposit to the tenants or make an application for dispute resolution claiming against the deposits in order to comply with the requirements of section 38(1) of the Act.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) provides as follows.

(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.

The requirement to pay double the amount of the deposits is not discretionary and I must administer this requirement in accordance with the Act as it is written unless the tenants expressly waive entitlement to this entitlement to double.

This decision is based upon the evidence before me and the application of the provisions of the Act. I reject the landlord's submission that I make a decision that is inconsistent or does not otherwise comply with the requirements of the Act.

In light of the above findings, I order that the landlords pay the tenants double the security deposit and pet deposit. The tenants are also awarded the filing fee paid for making this application. The tenants are provided a Monetary Order calculated as follows:

Double security deposit (\$1,750.00 x 2)	\$ 3,500.00
Double pet deposit (\$1,750.00 x 2)	3,500.00
Filing fee paid for this application	<u>100.00</u>
Monetary Order for tenants	\$ 7,100.00

The tenants must serve the enclosed Monetary Order upon the landlords and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the total amount of \$7,100.00 to serve upon the landlords and enforce in Provincial 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: October 06, 2010.

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Dispute Resolution Officer