



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes MNSD, O

### Introduction

This is an application by the Tenant for monetary orders for return of double the security deposit and for one month of rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlords?

Is the Tenant entitled to return of the May 2010 rent payment?

### Background and Evidence

The parties entered into a fixed term, one year written Tenancy Agreement which began on September 15, 2009. The Tenant paid a security deposit of \$675.00 on August 25, 2009, and the monthly rent was agreed upon at \$1,350.00

The Tenant testified she vacated the premises on April 1, 2010, following the Landlords issuing the Tenant a one month Notice to End Tenancy for cause. The Tenant was served with the Notice on March 14, 2010. Under the Act, the effective date of the Notice was therefore April 30, 2010.

The Landlords testified the Tenant did not vacate until April 7, 2010.

The Tenant testified she served the Landlords with her forwarding address by sending them an email on April 2, 2010. The Landlords deny receiving this email.

The Tenant testified she did not sign over a portion of the security deposit to the Landlords.

Both parties agreed that there were no incoming or outgoing condition inspection reports performed. The Landlords explained that at the outset of the tenancy, the Tenant and her boyfriend were friends with the Landlords. It is clear from the testimony and evidence that the friendship and the tenancy ended very badly. Therefore, an outgoing condition inspection report was not performed as well.

The Landlords testified that the Tenant had failed to pay the April 2010 rent when due on the first day of the month. The Landlords then deposited and cashed the post dated cheque they had for May 2010 rent from the Tenant.

The Landlords also allege there were damages done to the rental unit by the Tenant.

The Landlords had not filed a claim to recover the rent or the loss from the alleged damages to the rental unit by the Tenant.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential

Tenancies. The security deposit is held in trust for the Tenant by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the Act. Here I find that the Landlords did not have authority under the Act to keep any portion of the security deposit.

However, I do find the Tenant had insufficient evidence to prove she had sent the Landlords her forwarding address in accordance with the Act, which does not provide for service of documents through email, at the time of filing her Application. Therefore, I find the Tenant is not entitled to the return of double her security deposit.

I also find the Landlords were not entitled to cash the May 2010 rent cheque for rent that was due in April 2010, and they must return this to the Tenant.

It was explained to the Landlords that they could not make a monetary claim against the Tenant in the Tenant's own Application. It remains open to the Landlords to file their own Application for monetary orders for rent or alleged damages to the rental unit.

### Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$2,025.00**, comprised of the return of the security deposit (\$675.00) and the \$1,350 for the May 2010 rent cheque being cashed for April 2010 rent.

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. This Order may be filed in the Small Claims division of the Provincial 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 08, 2010.

---

Dispute Resolution Officer