



# 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 an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 28, 2010. Canada Post receipts were provided in the Tenant's documentary evidence. The Landlord is deemed to have been served the hearing documents on August 2, 2010, five days after they were mailed, in accordance with the *Act*. Based on the evidence before me I find the Landlord was sufficiently served notice of today's hearing.

The male Tenant appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing on behalf of the Landlord despite her being served notice of today's hearing in accordance with the *Act*.

### Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Tenants proven entitlement to a Monetary Order as a result of that breach?

### Background and Evidence

The parties entered into a written fixed term tenancy agreement effective July 1, 2009 which was set to switch to a month to month tenancy after July 1, 2010. Rent was payable on the first of each month in the amount of \$1,100.00 and a security deposit of

\$550.00 was paid on June 10, 2009. No move-in inspection report or move-out inspection report were completed.

The Tenants vacated the rental unit on June 29, 2010 and provided the Landlord with their forwarding address, in writing, via e-mail on June 30, 2010. The Tenant referred to his evidence which included several e-mails between the parties and confirmed they requested the return of their security deposit however the Landlord refused to return it.

The Tenants also provided evidence which supports the Landlord refused to pick up the registered mail which contained the hearing documents. Then July 19, 2010, the Tenants received a cheque from the Landlord in the regular mail. The cheque was for \$500.00 as the Landlord withheld \$50.00 from the security deposit without the written consent from the Tenants.

### Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by their documentary evidence.

I have carefully reviewed the testimony and evidence before me which included, among other things, a copy of the tenancy agreement, copies of e-mails between the parties, and the original envelope sent registered mail that was unclaimed by the Landlord.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act*

The evidence supports the tenancy ended at the end of June 2010; the Tenants vacated the rental unit June 29, 2010, and provided the Landlord with their forwarding address in writing on June 30, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than July 15, 2010. The Tenants received a partial payment of \$500.00 on July 19, 2010, four days after the due date.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the above I find the Tenants have met the burden of proof and I approve their claim for the return of double their security deposit plus interest.

The Tenants have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Tenants are entitled to a monetary claim as follows:

Double the Security Deposit 2 x \$550.00	\$1,100.00
Filing Fee	50.00
SUBTOTAL (Amount due to the Tenants)	<b>\$1,150.00</b>
<b>LESS:</b> Late partial payment	-500.00
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$650.00</b>

#### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$650.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: December 15, 2010.

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Dispute Resolution Officer