



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **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 the security deposit and to recover the filing fee.

The tenants served the landlord by registered mail on September, 16, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are the tenants entitled to recover double the security deposit?

### Background and Evidence

Both parties agree that this month to month tenancy started on May 15, 2009 and ended on August 01, 2010. Rent for this unit was \$1,200.00 per month and was due on the first of each month. The tenants paid a security deposit of \$600.00 on April 10, 2009. The landlord did not complete a move in condition inspection with the tenants and did not give the tenants at least two opportunities to attend a move out condition inspection. The tenants gave the landlord their forwarding address in writing on September 13, 2010.

The tenants claim that they attempted to reach the landlord at the end of their tenancy to arrange the move out condition inspection. The tenants state they were unable to contact the landlord. The tenants have provided copies of their telephone bills showing the landlords number recorded on several separate occasions. The male tenant states he eventually got hold of the landlord after they had moved out and arranged with her to rerun the security deposit to the Greyhound station and he would collect it from there. The tenant states he also told the landlord her husband could keep the tenants ladder left at the property in payment for the damage to the walls in the unit.

The tenants testify that they received a cheque from the landlord for part of their deposit to the sum of \$370.00 with this was a letter outlining deductions the landlord had made from their security deposit. The tenants also state they did not cash this cheque from the landlord as they did not agree to the deductions and filled their application for Dispute Resolution. The tenants testify that they thoroughly cleaned the rental unit before they left and see no reason why the landlord should deduct money for cleaning. The tenants also state they had left their key to the unit in an outside light fixture and had notified the landlord of its whereabouts. They therefore dispute the landlords claim against their security deposit for changing the locks. The tenants state they have received a money order from the landlord for the amount of \$370.00 but have not yet cashed this.

The tenant's testify that the landlord did not return their security deposit to them within 15 days of receiving their forwarding address and therefore seek to recover double their security deposit and the filing fee.

The landlord testifies that the balance of the security deposit of \$230.00 was withheld as the tenant had caused damage to the walls in the rental unit with a security system and television mountings, the unit was left unclean and they had not returned the keys. The landlord testifies that she tried to contact the tenants to arrange a move out inspection but could not reach them. The landlord agrees she did not give the tenants two opportunities for an inspection.

The landlord states she did return \$370.00 from the tenant's security deposit and withheld the rest for damages, changing the locks and cleaning costs. The landlord states as the tenants did not cash this cheque she put a stop on it and sent them a Money Order instead on September

27, 2010. The landlord agrees the tenants offered their ladder to her husband in payment for the holes to the walls but states she told the tenants her husband did not want the ladder and it remains at the rental unit for them to collect.

The tenants agree during this hearing that the holes in the walls were not repaired and as the landlord does not want their ladder in payment for this they agree she may deduct \$85.00 from their security deposit.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on September 13, 2010, after it was mailed on September 08, 2010. The landlord had until September 28, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did return \$370.00 of the security deposit to the tenants on September 15, 2010 and when the tenants failed to cash this cheque she sent a Money Order on September 27, 2010. However, the landlord retained the balance of the security deposit without the tenant's written permission and without filing an application to keep it.

I would also refer the landlord to s. 23(4) and 35(3) of the *Act* which requires a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete a condition inspection report when the tenants moved in, I find the landlord contravened s. 23(4) of the *Act*. I also find the landlord did not give the tenants at least two opportunities to attend a move out inspection. Consequently, s. 24(2)(a)

of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

During the hearing the tenants agreed the landlord could keep **\$85.00** from their security deposit to pay for the damage caused to the walls in the unit and agree they have received a money Order for \$370.00 of their security deposit. Consequently, I find the tenants are entitled to recover double the remainder of the security deposit pursuant to section 38(6)(b) of the *Act*.

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act* and are entitled to a Monetary Order as follows:

Security deposit	\$600.00
Less amount agreed the landlord may retain	\$85.00
Balance outstanding	\$145.00
Double the outstanding balance	\$290.00
Plus filing fee	\$50.00
<b>Total amount awarded to the tenants</b>	<b>\$340.00</b>

### Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$340.00**. The order must be served on the respondent 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: January 20, 2011.

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Residential Tenancy Branch