



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the tenants entitled to the return of double their security deposit?

### Background and Evidence

The undisputed facts before me are as follows. On May 30, 2009 a third party paid an \$800.00 security deposit to the landlord on behalf of the tenants. The tenants vacated the rental unit on October 31, 2009 and on September 16, 2010 the landlords received the tenants' forwarding address in writing.

### Analysis

Section 39 of the Act provides that the tenants have one year after the end of the tenancy to provide their forwarding address to the landlords. Section 38(1) of the Act provides that the landlords must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlords received the tenants' forwarding address on September 16, 2010 and I find the landlords failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and are therefore liable under section 38(6) which provides that the landlords must pay the tenants double the amount of the security deposit.

The landlords claimed that because a third party paid the deposit, they were under the impression that the third party had to agree to the return or retention of the deposit. The deposit was paid on behalf of the tenants and for their benefit and the landlords' contractual and statutory obligations were to the tenants, not to the third party. The

landlords also argued that because a third tenant was listed on the tenancy agreement, they were unsure who would have a right to claim the return of the deposit. The tenants were jointly and severally liable for their obligations under the tenancy agreement and also had a joint and several right to the return of the deposit, which meant that any one or all three could make a claim against the deposit. In this case, two tenants chose to jointly claim the deposit and have the right to do so. The landlords testified that because the tenants had agreed that the condition inspection report accurately reflected the condition of the rental unit and indicated that there was damage to the unit, they were justified in retaining the deposit. The condition inspection report indeed contains an agreement by the tenants that it accurately reflects the condition of the unit, but nowhere in that report is there a written agreement that the landlords could retain the deposit.

Although the tenants would have been entitled to an award of \$1,600.00 which is double the \$800.00 deposit, on their application they claimed just \$1,500.00 and I find they are limited to recovering that amount. The tenants are also entitled to recover the \$50.00 filing fee paid to bring their application. I award the tenants \$1,550.00.

### Conclusion

I grant the tenants an order under section 67 for \$1,550.00. 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: February 10, 2011

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Residential Tenancy Branch