

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This was an application by the tenants for a monetary order for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The named tenant and the landlord participated in the hearing.

### Issue(s) to be Decided

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

### Background and Evidence

The tenancy began on September 1, 2009. The tenants paid a security deposit of \$1,300.00 at the commencement of the tenancy. The tenancy ended by agreement on July 31, 2010.

The tenants did not receive the full amount of their security deposit from the landlord after the tenancy ended. The landlord returned the sum of \$116.57 to the tenants and retained the balance. According to the landlord this was because the tenants damaged a counter top; the landlord replaced it and deducted the cost from the tenants' security deposit.

The tenant sent a letter to the landlord on August 3, 2010. The letter provided the tenants' forwarding address and stated as follows:

Unfortunately you did not return my full \$1300.00 security deposit and only returned \$116.57. I don't believe that your argument for deducting from that amount is valid and hereby respectfully ask for for a full return of my security deposit to my postal address on top right of this page, otherwise I will have to file a claim for this issue.

The landlord acknowledged receiving this letter. She did not return the security deposit and she did not file an application for dispute resolution to claim the deposit. The landlord intends to file an application for dispute resolution to claim the cost to replace the counter and to claim other amounts from the tenants.

### Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlord with their forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$2,366.86, being double the unreturned portion of the tenants' deposit. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$2,416.86 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: February 25, 2011.

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