



# Dispute Resolution Services

Page: 1

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 their security deposit, doubled, and to recover the filing fee.

The evidence and testimony indicates that the Tenants served the Application and Notice of the Hearing documents to the Landlord in accordance with section 89 of the *Act*, via registered mail, on October 14, 2010. The evidence indicates that the mail went unclaimed, even though sent to the address provided by the Landlord to the Tenants; however I am satisfied that the Landlord was served in the time and manner in accordance with the *Residential Tenancy Act*, but did not appear at the hearing.

Tenant AG appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act* (the “*Act*”)?

### Background and Evidence

This tenancy began on January 15, 2010, ended on August 31, 2010, and a security deposit of \$597.50 was paid at the beginning of the tenancy.

The Tenant supplied evidence and gave affirmed testimony that the Tenants provided the Landlord their written forwarding address, on August 31, 2010, on the move out condition inspection report.

The evidence and testimony also indicates that the Tenants agreed to allow the Landlord to deduct the cost of a water stain removal, in an unknown amount, but the

evidence also indicates that the Landlord elected not to do so. The evidence and testimony also indicates that the Landlord attempted to refund the Tenants the security deposit on November 22, 2010, but was declined by the Tenants.

The Landlord has not filed for Dispute Resolution.

### Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants bear the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicants pursuant to section 7.

The evidence and testimony supports that the Tenants provided the Landlord with their written forwarding address on August 31, 2010, on the move out condition inspection report.

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 September 15, 2010.

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenants' written consent to retain the security deposit.

Based on the above, I find that the Landlord 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 deposit and the landlord must pay the tenant double the security deposit.

Therefore, I find that the Tenants have succeeded in proving the test for damage or loss as listed above.

### Conclusion

I find that the Tenants are entitled to a monetary order as follows:

Doubled Security Deposit owed (2 x \$597.50)	\$1,195.00
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$1,245.00</b>

Pursuant to the policy guideline, I have provided the Tenants with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) 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 21, 2011.

---

Residential Tenancy Branch