



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            MNSD, FF

### Introduction

This matter dealt with an application by the tenants to obtain double the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on October 19, 2010. The landlord confirmed receipt of the hearing documents. The tenants confirmed receipt of part of the landlords' evidence package. The additional evidence not sent to the tenants will not be used in the landlords' documentary evidence at 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:

### Issue(s) to be Decided

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

### Background and Evidence

Both parties agree that this tenancy started on February 01, 2008 and ended on September 30, 2010. Rent for this unit was \$850.00 per month and was due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$425.00 on January 07, 2008. The tenants gave the landlord their forwarding address in writing on September 30, 2010. The landlord did not carry out either

a Move in or a Move out condition inspection of the rental unit at the start and end of the tenancy.

The tenants testify that the landlord returned \$311.27 of their security deposit on October 04, 2010. The landlord retained \$120.00 from their deposit for cleaning the rental unit. The tenants testify that they did not authorise the landlord to make this deduction and disputes the landlords claim as to why she made the deduction. The female tenant claims she cleaned the rental unit before the end of the tenancy and had cleaned the kitchen and bathrooms on the day she moved out. The tenants state the landlord came round on the day they moved out to patch a wall and ended up removing vines through the kitchen window, standing on the work surface in her shoes to do so and taking the vines out through the house making a mess.

The tenants claim the landlord did not give them time to finish cleaning the unit before the carpet cleaner came at 2.30 p.m. The tenants have provided a receipt for the carpet cleaning.

The tenants seek to recover double the balance of the security deposit as it was not returned to them within 15 days of the landlords receiving their forwarding address. The tenants also seek to recover their filing fee of \$50.00 paid for this application. The tenants state that on their application they just put down the amount of the unreturned security deposit of \$120.00. They state that in the 'details of dispute' they did request that this amount should be doubled according to the *Residential Tenancy Act (Act)*.

The landlords testify that \$120.00 was withheld from the security deposit as the tenants did not clean the unit properly at the end of the tenancy. The landlord claims she went to the rental unit on move out day and the female tenant was trying to clean while also caring for her young son. The landlord testifies that she had to get her cleaning lady in to clean the rental unit thoroughly. This took the cleaning lady six hours and she charges \$20.00 per hour.

### 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 30, 2010, As a result, the landlord had until October 15, 2010 to return the security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return all the security deposit but kept \$120.00 back for cleaning she claims was required at the end of the tenancy.

Sections 23(4) and 35(3) of the *Act* also 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 the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages (or cleaning) is extinguished.

Therefore, I find that the tenants have established a claim for the return of double the balance of the security deposit of **\$120.00** pursuant to section 38(6)(b) of the *Act*. As the landlord returned the sum of \$311.27 this amount also included the accrued interest on the deposit.

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*. The tenants are entitled to a Monetary Order as follows:

Double the balance of the security deposit security deposit	\$240.00
<b>Total amount due to the tenants</b>	<b>\$290.00</b>

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$290.00**. 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: February 15, 2011.

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Residential Tenancy Branch