



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            MNSD

### Introduction

This matter dealt with an application by the tenants for the return of their security deposit.

Service of the hearing documents was done in accordance with s. 82 of the *Act*. They were given to the landlord in person on December 06, 2010. 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:

### Preliminary Issues

The tenant's state there was a problem with the hot water tank which caused high consumption of Hydro. However they have not applied for a Monetary Order in this matter and it will not be dealt with at this hearing.

### Issues(s) to be Decided

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

### Background and Evidence

Both parties agree that this tenancy started on May 01, 2008 and ended on October 31, 2010. Pad rent for this unit was \$700.00 per the month and was due on the first of each month. The tenants paid a security deposit of \$350.00 on May 01, 2008.

The tenants testify that the landlord returned \$200.00 from their security deposit on October 31, 2010 but withheld the remainder of their deposit of \$150.00 plus interest. The tenants seek to recover the remainder of their security deposit as it was not returned by the landlord. The tenants agree they have not provided the landlord with their forwarding address but state the address on their application is their forwarding address.

The tenants also claim another security deposit of \$300.00 was paid when the male tenant moved into the unit however they have no evidence of this and have not applied to recover this sum.

The landlord testifies she withheld \$150.00 from the tenant's security deposit and denies the tenants claim they that paid another \$300.00. She states she did ask for a pet deposit of \$300.00 but the tenants never paid this to her.

### Analysis

The tenants have applied for the return of the balance of their security deposit; The *Manufactured Home Park Tenancy Act* does not require a tenant to give a landlord a security deposit; however, Section 91(1) and (2)(d) and (e) of this *Act* does state:

91 (1) A landlord who holds a security deposit under the former Act in respect of a tenancy agreement to which this Act applies, despite section 17 (2) [*security deposits*], may hold that security deposit until the end of the tenancy.

(2) The following sections of the *Residential Tenancy Act* apply in respect of a security deposit referred to in subsection (1):

(d) section 38 [*return of security deposit*];

(e) section 39 [*if forwarding address not provided*];

Therefore I will deal with this matter under the *Residential Tenancy Act* as a security deposit was given to the landlord at the start of the tenancy. In this matter I find the tenants did not give the landlord a forwarding address in writing, as required under section 38 (1) of the *Residential Tenancy Act*, prior to applying for arbitration.

Therefore at the time that the tenants applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenants' agent stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today April 01, 2011 and must either return the security deposit or file an application to keep it within 15 days of today's date pursuant to section 38 of the Act.

### Conclusion

I therefore dismiss the tenants claim in its entirety with leave to re-apply.

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: April 06, 2011.

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Residential Tenancy Branch