



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit and her filing fee for the claim.

The Tenant served the Landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 2, 2010, and deemed received under the Act five days later. Despite this the Landlords did not attend the hearing. I find the Landlords have been duly served in accordance with the Act.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlords?

### Background and Evidence

The Tenant paid the Landlords a security deposit of \$550.00 on or about November 30, 2009.

The Tenant moved into the rental unit, however, there was a fire in the unit on or about December 2, 2009. The Tenant had to leave the rental unit due to the fire damage.

The Tenant and her advocate provided the Landlords with a written notice of the forwarding address to return the security deposit to on October 18, 2010, via registered mail.

The Tenant did not sign over a portion of the security deposit.

The testimony of the Tenant was that the Landlords did not return her security deposit, nor did they return the rent she had paid for the month of December 2009.

The Tenant and her advocate requested the Application be amended to include the loss of rent for December 2009 paid to the Landlords.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlords had no authority under the Act to keep any portion of the security deposit.

I find that the Landlords are not entitled to retain any portion of the security deposit.

I do not allow the Tenant to amend this claim to include the rent for December 2009. The Tenant must make a separate Application for this loss.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$1,150.00**, comprised of double the security deposit (2 x \$550.00) and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The Tenant has liberty to apply for the return of her December 2009 rent paid to the Landlords.

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 11, 2011.

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Residential Tenancy Branch