



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord by the male Tenant on approximately February 22, 2011, at the Landlord's residence.

The male Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite him being served notice of today's hearing in accordance with the *Act*.

### Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Tenant testified that they entered into a month to month tenancy agreement which began on approximately October 1, 2010. Rent was payable on the first of each month in the amount of \$650.00 and they paid \$500.00 as the combined security deposit and pet deposit to the Landlord in cash at the outset of the tenancy.

When the Landlord failed to respond to their requests for repairs and concerns about the presence of mold the Tenants ended the tenancy when they vacated the property on approximately January 31, 2011. They provided a copy of a letter dated Feb 1, 2011

that was handed delivered to the Landlord requesting their security and pet deposit be returned to their forwarding address listed at the bottom of this letter. When the Landlord did not comply within the required 15 days they made application for double the amount of their rent of \$1,300.00. The Tenant stated that he was certain the deposits came to a total of \$500.00.

### Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by their evidence.

The evidence supports the Tenants ended the tenancy when they vacated the property on or before January 31, 2011 and that they provided the Landlord with their forwarding address, in writing, on February 1, 2011.

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 and pet 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 and pet deposits in full or file for dispute resolution no later than February 16, 2011.

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

Based on the aforementioned, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security and pet deposit plus interest in the amount of **\$1,000.00** (2 x \$500.00 + \$0.00 interest).

The Tenants have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order for **\$1,050.00** (\$1,000.00 + \$50.00). The Order must be served on the respondent Landlord 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: June 01, 2011.

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Residential Tenancy Branch