



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order for \$3900.00 and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The applicant testified that:

- The landlord has not returned her security deposit even though a forwarding address in writing was given to the landlords by registered mail that was mailed on May 7, 2011.
- She is therefore requesting an order for return of double the security deposit.
- The landlord served her with a two months notice for landlord use, and she vacated pursuant to that notice on March 30, 2011.

- Two weeks after vacating the rental unit the landlord moved new tenants into the rental unit.
- They have driven by the rental unit and have seen that the new people living in the rental unit are Caucasian, and since the landlords are Indo Canadian, it's obvious that the landlords are not living in the rental unit.
- She supplied a letter from a neighbour who also states that the people living in the rental unit are not the landlord or his immediate family.
- She is therefore requesting an order for the landlord to pay double the amount of the rent as compensation.

The respondent's testified that:

- The female landlord is living in the rental unit, but is sharing the unit with a Caucasian friend who left her husband and was looking for a place to stay.
- The male landlord has not moved into the rental unit, and is still living in the family home however the female landlord fully intends to stay in the rental unit for the six-month period required under the Residential Tenancy Act.
- They have supplied a letter from the woman who is sharing the house with the female landlord, which confirms that the female landlord is also living in the rental unit.
- They did not return the security deposit to the tenant because of damages in the rental unit, and were unaware of the time limits.

### Analysis

#### Security deposit

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and did not apply for dispute resolution within the time limit required under the Residential Tenancy Act.

This tenancy ended on March 30, 2011 and the landlord had a forwarding address in writing by May 12, 2011 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Further the landlords right to claim against the security deposit has been extinguished because the landlord failed to complete a move in inspection report and provide the tenants with a copy of that report at the beginning of the tenancy.

Therefore the landlord must pay double the amount of the security deposit to the tenants.

The tenants paid a deposit of \$650.00 and therefore the landlords must pay \$1300.00.

Request for two times the amount of the rent

The landlords testified that the reason that the applicant and the neighbour have seen a Caucasian living in the rental unit is because the female landlord is sharing the rental unit with a friend, however I do not find that explanation credible.

The male landlord has admitted that he has not moved into the rental unit and I find it unlikely that his wife has moved into the rental unit on her own.

Further even though the landlords have provided a witness letter that states that she is sharing a house with the female landlord, it is my finding that the fact that the utilities have even been put into that witnesses mother's name supports the tenants claim that the landlords have moved in a new tenant.

I therefore find" on the balance of probabilities" that the landlords have re-rented the rental unit to new tenants.

Section 51(2)(b) of the Residential Tenancy Act states:

51(2) In addition to the amount payable under subsection (1), if  
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,  
the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

It is therefore my decision that I will allow the request for two times the \$1300.00 amount of the rent, for a total of \$2600.00.

I also allow the applicants request for recovery of the \$50.00 filing fee

### Conclusion

I have issued a monetary order in the amount of \$3950.00.

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: August 17, 2011.

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Residential Tenancy Branch