



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenants for the return of a security deposit.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 27, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit?

### Background and Evidence

This tenancy started on September 1, 2008, as a fixed term tenancy and renewed as a month to month tenancy. The tenancy ended August 1, 2010. The Tenant said one of the Tenants remained in the unit for the month of August, 2010 to do renovations for the Landlord, but that was a separate agreement to this tenancy. Rent was \$1,800.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$900.00 on September 1, 2008.

The Tenant said that they moved out of the rental unit on August 1, 2010 and gave the Landlord a forwarding address in writing on August 11, 2010. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that he they gave notice to the Landlord on June 20, 2010, that they were moving out on August 1, 2010. The Tenant said they offered the Landlord the notice in writing, but the Landlord refused to take it. The Tenant continued to say that both the Tenant and the Tenants’ agent S.S. have asked the Landlord for the security deposit back, but the Landlord has not responded to either of them.

The Landlord has not made an application to the Residential Tenancy Branch and they did not attend the hearing on September 27, 2011.

The Tenants said he has applied for double the return of a security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony he did give the Landlord a forwarding address in writing on August 11, 2010 and the tenancy ended on August 1, 2010. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenants and awarded the Tenants double the security deposit of \$900.00 in the amount of \$1,800.00. As well I award the Tenants the accrued interest on the security deposit from September 1, 2008 to September 27, 2011 in the amount of \$4.50.

As the Tenants have been successful in this matter I further order the Tenants to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to

sections 67 and 72 of the Act a monetary order for \$1,854.50 will be issued to the Tenants. This Monetary order represents double the security deposit of \$1,800.00, accrued interest on the security deposit of \$4.50 and the filing fee of \$50.00.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,854.50 to the Tenant. 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*.

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Residential Tenancy Branch