



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was scheduled to hear the tenant's request for return of double security deposit and return of his "tool deposit". Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The female landlord confirmed that she was representing both named landlords as the male landlord was unavailable to appear due to work requirements.

### Issue(s) to be Decided

Has the tenant established an entitlement to return of double the security deposit and "tool deposit"?

### Background and Evidence

The parties provided the following undisputed evidence. The tenancy commenced March 2010 for a monthly rent of \$450.00. The tenant paid \$500.00 to the landlord shortly after the tenancy commenced for a security deposit and a "tool deposit". The "tool deposit" was collected by the landlord in recognition to the tenant being provided use and access to the landlord's garage for storage of his tools and dirt bike. In March 2011 the landlord advised the tenant he had to move out by May 1, 2011 so that the landlord's brother could move into the rental unit. On April 1, 2011 the tenant gave the landlord \$225.00 in cash and a verbal agreement was reached that the balance of rent owed for April 2011 was to come from the security deposit and the tool deposit landlord would return the tool deposit to the tenant. On April 26, 2011 there was an incident between the tenant and the male landlord due to allegations of the tenant smoking marijuana. The male landlord told the tenant not to return to the property and the tenant complied with the landlord's instructions.

On May 5, 2011 the tenant sent a letter to the male landlord requesting return of both of his deposits and gave the landlord his forwarding address. The tenant provided a

registered mail tracking number as proof of service of the letter. A search of the tracking number showed that the male landlord signed for the registered mail on May 10, 2011.

The landlords did not return the balance of the deposits to the tenant. The landlord explained the reason for not returning the tool deposit was because the tenant smoked marijuana on the property.

### Analysis

Although I heard evidence that constitutes a violation of the Act, the only issues before me is whether the tenant is entitled to return of his deposits and whether the deposits should be doubled. Accordingly, I make no findings or awards in this decision with respect to any other matters.

The Act limits the type deposits a landlord may collect from a tenant to a security deposit and a pet damage deposit. The Regulations also permit a landlord to charge a refundable fee for keys. As the Act or the Regulations do not permit a landlord to charge or collect a "tool deposit" I have considered the \$500.00 payment made by the tenant at the beginning of the tenancy to be a security deposit.

The Act limits the amount of a security deposit to one-half of the monthly rent. Since the monthly rent was \$450.00 the landlords were not allowed to collect any more than \$225.00 from the tenant. Accordingly, I find the tenant overpaid the security deposit by \$275.00.

When a tenant overpays a security deposit, the Act provides that the tenant may withhold the overpayment from rent otherwise payable to the landlord.

Having heard the tenant paid \$225.00 to the landlord for rent for the month of April I find that the remaining \$225.00 owed for rent was paid by way of the overpaid security deposit. Therefore, the rent for April 2011 is considered fully paid and after deducting \$225.00 from the \$500.00 security deposit, I find the landlords were in possession of a \$275.00 security deposit at the end of the tenancy.

If the landlord does not have the tenants written consent to retain the security deposit, section 38(1) of the Act requires that the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to

comply with the requirements of section 38(1) then section 38(6) requires a landlord to pay the tenant double the security deposit.

Based upon the evidence before me, I find that the landlords received the tenant's forwarding address on May 10, 2011 and did not return the security deposit or make an Application for Dispute Resolution within 15 days or May 25, 2011. Therefore, I find the landlords violated section 38(1) of the Act with respect to the \$275.00 security deposit in their possession and the landlords must now pay the tenant double that amount pursuant to section 38(6) of the Act.

The landlord's assertion that the tenant smoked marijuana on the property does not form a legal right to retain the tenant's security deposit.

The tenant is provided a Monetary Order in the total amount of \$600.00 which is comprised of \$550.00 for double the security deposit and \$50.00 for the filing fee paid for this application.

### Conclusion

The tenant has been provided a Monetary Order in the amount of \$600.00 to serve upon 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: November 16, 2011.

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Residential Tenancy Branch