



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application by the Landlord for a monetary order to retain all or part of the security deposit, and recover the filing fee.

Both parties appeared, gave affirmed testimony 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 Landlord provided written submissions on November 25 and 28, several days after the date of the hearing. I have not considered or accepted these submissions as they were not provided to me prior to the hearing in compliance with the *Residential Tenancy Act* (the "Act") or Rules of Procedure and the Tenants were not given opportunity to respond to them.

### Issue(s) to be Decided

Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

The parties agree that the Tenants paid a security deposit of \$450.00 on April 01, 2011. The parties agree that they have a written tenancy agreement and that the tenancy commenced on April 01, 2011 with a monthly rent of \$900.00 due on the first of the month. Neither party provided a copy of the tenancy agreement in evidence prior to the hearing. The parties agree the Tenants provided the Landlord with a letter dated September 29, 2011 with their forwarding address in writing and requested return of their security deposit. The Tenants sent this letter with their forwarding address to the Landlord by registered mail on October 04, 2011. The parties agree that the Tenants did not sign over their security deposit to the Landlord. The Landlord applied for dispute resolution on October 07, 2011 which is less than fifteen days from the date the written forwarding address was provided by the Tenants.

The parties agree that the Tenants provided the Landlord notice to end the tenancy on September 02, 2011 and that they vacated the rental unit before the end of September 2011. The parties agree that the Tenants paid the September 2011 rent in full. The parties confirmed that they did not do incoming not outgoing inspection reports.

The Landlord states that the Tenants failed to give a full month's notice and that the tenancy agreement has a lease clause in it. The Landlord confirmed that he did find a new Tenant for October 01, 2011 and rent has been paid in full by the new Tenant for October 01, 2011. The Landlord confirmed that he had no monetary loss and that the condition of the rental unit was good and there were no damages to the rental unit by the Tenants. The Landlord stated that as the Tenants have contravened the Act by failing to provide him with sufficient notice, that he feels he is entitled to keep the security deposit.

The Tenants stated they only had a six month lease and that September was the last month of that lease. The Tenants acknowledged that they were late in giving notice to the Landlord. The Tenants stated that they moved out on September 23, 2011 and the new Tenant moved in early before the end of September. The Tenants feel that they should get their security deposit back as the Landlord incurred no losses or damages and the rental unit was in good condition when they moved out. Although they have not made an application, the Tenants requested that the Landlord return their security deposit to them.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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

The Landlord did apply for dispute resolution, within fifteen days of the end of the tenancy and receipt of the forwarding address of the Tenant, to retain the security deposit.

However, the Landlord failed to perform incoming or outgoing condition inspection reports, as required by section 23 and 35 of the Act.

Both landlords and tenants have rights and responsibilities under the Act. The security deposit is held in trust for the Tenant by the Landlord. The Landlord may not keep the security deposit because they feel they are entitled to it or are justified to keep it. The Landlord stated that they incurred no losses or costs in relation to the Tenants failing to give a full month's notice prior to ending the tenancy. The Landlord failed to provide a copy of the tenancy agreement into evidence prior to the hearing, and as a result I do not find that there was any breach of a lease agreement nor any liquidated damages owing to the Landlord.

I find that the Landlord is not entitled to retain any portion of the security deposit. As a result, the Landlord's Application is dismissed.

Residential Tenancy Policy Guideline 17 states:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH  
ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

As a result, I order that the Landlord pay \$450.00, the full amount of the security deposit, to the Tenants. I find that the Tenants are entitled to a monetary order for \$450.00 pursuant to section 67 of the Act.

Conclusion

The Landlord's Application is dismissed.

I find that the Tenants are entitled to a monetary order in the amount of **\$450.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenants' copy of this decision.

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: December 01, 2011.

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Residential Tenancy Branch