



# 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 Tenants for a monetary order for return of the security deposit.

The Tenants provided affirmed testimony that they served the Landlord, by registered mail at their head office with the Application for Dispute Resolution and Notice of Hearing on September 30, 2011, and provided the customer receipt/tracking slip from Canada Post as evidence. The Tenants also stated that they additionally personally served a copy of the Application and Notice of Hearing to the building manager ML at the rental office of the building on September 30, 2011.

I find that the Landlord was served the Application and Notice of Hearing in accordance with section 88 of the *Residential Tenancy Act* (the "Act").

The Landlord did not participate in the conference call hearing. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

### Background and Evidence

The Tenants testified that they paid a security deposit of \$425.00 when the tenancy commenced in September 2009. The Tenants stated that the monthly rent was \$895.00 per month. The Tenants stated that the tenancy ended on July 31, 2011. The Tenants provided into evidence, in advance of the hearing, a copy of the move out inspection report that they completed with the building manager ML on July 31, 2011. The Tenants did not provide a copy of the tenancy agreement. The Tenants are seeking return of the security deposit in accordance with the Act.

The Tenants stated that they provided the Landlord their forwarding address in writing on the move out inspection report. The Tenants stated that the building manager ML advised them to wait fifteen days after the move out inspection and they would receive their security deposit at their new address. The Tenants stated they did not receive the

security deposit. The Tenants filed for dispute resolution on September 27, 2011 and they were provided a Notice of Hearing package on September 29, 2011.

The Tenants stated that they paid a \$50.00 deposit fee for a garage remote which they returned to the Landlord, however, they stated the Landlord did not return this deposit fee to them when they moved out. The Tenants stated that they did not receive a receipt for the garage remote deposit fee when this was paid to the Landlord and the fee is not noted on the move out inspection report.

The Tenants stated that they authorized \$65.00 for drape cleaning to be deducted from the security deposit of \$425.00 as stated on the move out inspection report, and that this is the only amount they authorized as a deduction. The Tenants are seeking the balance of the security deposit which is \$360.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

Although the Tenants did not provide a copy of the tenancy agreement, they did provide the move out inspection report of July 31, 2011, signed by the parties, which identifies the \$425.00 security deposit and shows an authorization to deduct \$65.00 for the drape cleaning. This evidence supports the Tenants position that as of July 31, 2011 there was a balance owing of \$360.00 from their security deposit. The move out inspection report shows that the Tenants provided their written forwarding address to the Landlord on July 31, 2011 for their security deposit to be sent to.

There was no evidence showing that the Landlord had returned the security deposit or that the Landlord applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants.

As a result, the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep the balance of the security deposit and the Tenants stated they only authorized \$65.00 for the drape cleaning to be deducted. Therefore, I find that the Landlord is not entitled to retain \$360.00 which is the balance of the security deposit.

Section 38(6) of the Act requires that a landlord pay a tenant double their security deposit if the landlord has failed to return the security deposit to the tenant within 15

days of receiving the tenant's forwarding address and has failed to apply for dispute resolution within that time frame. I find that the Tenants are entitled to \$720.00 which is double the balance (\$360.00) of the security deposit.

While the Tenants' evidence confirmed that the Landlord held a \$425.00 security deposit, they provided no documented evidence to support that they had paid a \$50.00 deposit fee for a garage remote. As a result I am dismissing the Tenants' request for a garage remote deposit fee as they have failed to prove this part of their claim.

I find that the Tenants have mostly succeeded in their Application, as a result they are entitled to recover their \$50.00 filing fee for this Application. As a result, the Tenants are entitled to a monetary order against the Landlord in the total amount of \$770.00.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of \$770.00, comprised of double the balance (\$360.00) of the security deposit and the \$50.00 filing fee.

The Tenants are granted a formal monetary order for **\$770.00** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to 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 06, 2011.

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Residential Tenancy Branch