



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that on July 25, 2011 he received the tenants' written notice to end their tenancy by August 31, 2011. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 23, 2011. I am satisfied that the tenants sent these documents to the landlord in accordance with the *Act*.

### Issues(s) to be Decided

Are the tenants entitled to obtain a return of their security deposit in accordance with section 38 of the *Act*? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit for the landlord's failure to return their security deposit or apply for dispute resolution within 15 days of receiving their forwarding address in writing? Are the tenants entitled to recover their filing fee for their application from the landlord?

### Background and Evidence

This one-year fixed term tenancy commenced on January 1, 2011. Monthly rent was set at \$1,700.00 (plus heat), payable in advance on the first of each month. The landlord continues to hold the tenants' \$850.00 security deposit paid on November 28, 2010.

Joint move-in and move-out condition inspections were conducted on January 1, 2011 and August 30, 2011, respectively. The landlord confirmed the oral and written

testimony of the female tenant (the tenant) to the effect that the rental premises were not damaged and were left in good condition at the end of the tenancy.

The landlord did not dispute the tenant's claim that she provided the landlord with the tenants' forwarding address in writing on August 30, 2011, the same date that the tenants vacated the rental unit. The landlord said that the security deposit was not returned to the tenants because the tenants ended their tenancy before the expiration of their fixed term tenancy on December 31, 2011.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. The landlord testified that his company did not apply for dispute resolution to authorize the retention of any portion of the tenants' security deposit. If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (section 38(6) of the *Act*).

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

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

*3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

I find that the landlord had no legal basis for withholding the tenants' \$850.00 security deposit. The landlord did not file an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing, nor did the landlord obtain the tenants' written permission to withhold these funds. As noted in Policy Guideline 17, the validity of any monetary claim that the landlord may have against the tenants has no bearing on the landlord's obligation to return the entire security deposit to the tenants in accordance with section 38 of the *Act*.

Under these circumstances, I find that the tenants are entitled to a monetary Order amounting to double their security deposit plus applicable interest. No interest is payable over this period. As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee for this application from the landlords.

#### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,750.00. This monetary Order allows the tenants to recover their \$850.00 security deposit, to obtain a monetary award of an additional \$850.00 pursuant to section 38(6) of the *Act* for the landlord's failure to comply with section 38(1) of the *Act*, and to recover their filing fee for their application for dispute resolution from the landlord pursuant to section 72 of the *Act*.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.

Dated: December 09, 2011

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Residential Tenancy Branch