



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**DISPUTE CODES** MNSD, FF

### **INTRODUCTION**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

Both parties attended the hearing. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **BACKGROUND AND EVIDENCE**

The tenant testified that she paid a security deposit of \$725.00 at the start of this tenancy in February 2008. The tenant testified that she vacated the premises on August 28, 2011 at which time she completed a move-out Condition Inspection Report with the landlords' agent upon which she supplied her forwarding address. On that report it was noted that: a glass pane for a shelf was missing which had ordered by the tenant, there were some light bulbs burnt out, the smoke detectors required new batteries and there were "...issues with appliances /some since start of rental (oven light not on and won't clean)" it is also noted that the windows were not cleaned. The report also noted that "NIL" would be deducted from the tenant's security deposit. To date his deposit has not been returned and on October 28, 2011 the tenant filed this application seeking recovery of double the deposit.

The landlord acknowledges receiving the tenant's forwarding address however the landlord submits that the forwarding address was not supplied to them by their agent until September. The landlord agrees they have not returned the deposit. The landlords filed an Application for Dispute Resolution on October 31, 2011 claiming the \$725.00 deposit. The landlords say that they do not agree with the Condition Inspection Report prepared by their agent. The report states that the rental unit was in good or the same condition as it was at move-in and it does not set out any damages or cleaning required. The landlord says there were damages and cleaning required. The landlord

says the costs of repairs and cleaning exceed the \$725.00 security deposit paid but they wish to claim only the \$725.00

## **FINDINGS**

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 writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause. In this case the landlord did not file an application until October 31, 2011 although the forwarding address was given to the landlord's agent on August 28, 2011. While the landlords argue that their agent did not provide them with the forwarding address until September their agent acted on their behalf, representing the landlords at the move-out inspection as though the move-out had been performed by the landlords themselves. If the agent they landlords' selected did not provide them with the forwarding address in a timely fashion in order to allow the landlords to meet their responsibilities under the Act, this cannot be blamed on the tenant. Further, even if I were to accept this as a reason for not complying with the Act the fact is that the landlords' testified that they received the forwarding address from their agent in September but still did not return the deposit or file their application until October 31, 2011; a month or more after receipt of the forwarding address.

If the landlord fails to comply with section 38(1), 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)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlords have not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on February 1, 2008	\$725.00
Interest on original amount paid from date security deposit paid to date of this order	9.95
Filing Fees	50.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1509.95</b>

The tenant is provided with an Order in the above terms 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, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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*.

Dated: December 21, 2011.

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Residential Tenancy Branch