



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for the return of double the security and pet deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to recover double the security and pet deposits?

### Background and Evidence

Both parties agree that this tenancy started on February 01, 2011. This was a fixed term tenancy which was due to expire on February 01, 2012. The tenant vacated the rental unit on August 31, 2011. Rent for this unit was \$1,200.00 and was due on the first day of each month in advance. The tenant paid a security deposit of \$550.00 and a pet deposit of \$200.00 at the start of the tenancy.

The tenant testifies that she gave the landlords her forwarding address in writing on August 31, 2011 and asked the landlords to return the security and pet deposit. The tenant states the landlords' failed to return the deposits within 15 days and the tenant therefore seeks to recover double these deposits to the sum of \$1,500.00.

The tenant states the landlords did not complete either a move in condition inspection or a move out condition inspection. The tenant agrees her dog did some minor damage to the unit and states she was trying to work this out with the landlords and had arranged for her father to make these repairs however the landlord did not want the tenants father to do this work.

The landlord testifies that they did not complete a move in condition inspection report with the tenant as the landlords had just spent a month cleaning the unit after they had purchased the house. The landlord testifies they were not aware that they had to do this report at the beginning and end of a tenancy and were not aware that they had to return the security deposit within 15 days.

The landlord testifies that the tenant had told the landlords verbally that they could keep her pet deposit as the tenants pet had caused damage to the unit. The landlords state they kept the tenants security and pet deposits as the tenant had failed to repair damage found in the unit and had not cleaned the unit.

The tenant testifies that the tenancy agreement they had in place had not been signed by any of the parties but it does inform the parties of the landlords responsibility to do the condition inspections and to return the security deposit.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit and pet deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security and pet deposits has been extinguished the landlords are not entitled to file a claim to keep the security or pet deposits and if the deposits have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlords their forwarding address in writing the landlords must pay double the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated August 31, 2011. As a result, the landlords had until September 15, 2011 to return the tenants security and pet deposit. I find the landlords did not return the security deposit or pet deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit and pet deposit to the sum of **\$1,500.00** pursuant to section 38(6)(b) of the *Act*.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

|  |                   |
|--|-------------------|
| Double the security and pet deposits   | \$1,500.00        |
| Filing fee                             | \$50.00           |
| <b>Total amount due to the tenants</b> | <b>\$1,550.00</b> |

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 19, 2011.

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Residential Tenancy Branch