



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on July 1, 2006 and ended on September 30, 2011. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$1,175.00. A move-in and move-out inspection was not offered by the Landlord or completed by the Landlord and Tenants. The Tenants provided the forwarding address in writing on August 30, 2011. The Landlord states that the address was not provided on this date. The Parties agree that the total amount of \$791.00 was returned to the Tenants by October 24, 2011. The Landlord states that the remainder of the security deposit was retained for damages to the unit however, the Landlord did not file an application for dispute resolution to make a claim against the security deposit. The Landlord submits that the Tenants did not claim double the return on the application for dispute resolution and that they therefore cannot claim double at the hearing. The

Tenant stated at the hearing that return of double the security deposit was not being waived.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit. Although the Tenants did not set out an amount equivalent to double the security deposit on the application, the Tenants did not waive the requirement contained in the Act and I find therefore that the Tenants are entitled to return of double the security deposit plus interest in the amount of **\$2,366.44** (\$1,175.00 x 2 plus 16.44) less the amount of **\$791.00**, already received, for a remaining amount of **\$1,575.44**. The Tenants are also entitled to return of the \$50.00 filing fee for a total entitlement of **\$1,625.44**.

### Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,625.44**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 03, 2012.

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Residential Tenancy Branch