



# 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 by way of conference call in repose to the tenants application for an Order for the return of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. At the outset of the hearing the tenants withdrew their claim for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement

One of the tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords and tenants 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

- Are the tenants entitled to recover double their security deposit?

### Background and Evidence

Both parties agree that this tenancy started on July 01, 2009. This tenancy started as a fixed term lease and reverted to a month to month tenancy at the end of the fixed term

on June 30, 2010. The tenants paid a monthly rent for this unit of \$2,100.00 which was due on the first day of each month. The tenants paid a security deposit of \$1,050.00 and a pet deposit of \$1,050.00 on June 01, 2009.

The tenant attending testifies that the landlords did not complete a move in or move out written inspection report with the tenants at the start and end of the tenancy. The tenant states they did attend a walkthrough of the unit with the landlords and gave the landlord a forwarding address in writing on September 30, 2011. The tenant testifies that at the time she did not have her full postal code but gave the landlord their forwarding address minus the last three letters of the postal code on her business card. The tenant testifies that she gave the landlord the full postal code on October 17, 2011.

The tenant testifies they did receive a cheque from the landlords for \$1,500.00 on October 17, 2011 for part of their security and pet deposits. The balance of \$600.00 was withheld by the landlords until October 25, 2011. The tenant testifies that they did not authorise the landlord to withhold any portion of their deposits at the end of the tenancy and testifies that the house was cleaned professionally and the carpets were also professionally cleaned. The tenants have provided the receipts for this work.

The tenant states the landlord withheld a portion of their security deposit because the landlords claimed the tenants had broken some blinds however the tenant states these blinds were in poor condition at the start of the tenancy and when they opened them the blinds broke.

The tenant testifies that the landlord failed to return their deposits within the 15 allowable days of receiving the tenants forwarding address in writing. The tenant states due to this they now seek to recover double their security and pet deposit to the sum of \$4,200.00.

The landlord testifies that the tenants did cause damage to the blinds and a lamp and left eight burnt out light bulbs. The landlord testifies that the tenants had signed an

addendum to the tenancy agreement in which they agreed to have the house fumigated if there was an issue with fleas from the tenants' pets. The landlord testifies they withheld the deposits to see if an issue with fleas did arise after the tenancy ended and to replace the blinds, lamp and bulbs.

The landlord testifies the tenants did not provided a complete address as they failed to provide a full postal code and the landlord states the tenant did not provide the postal code until October 17, 2011 after the landlord sent the tenant an e-mail to request it. The landlord testifies that as soon as they got the full address they returned \$1,500.00 of the deposits on that day and the balance of \$600.00 on October 25, 2011. The landlord states therefore the deposits were returned within 15 Days of the landlords' receiving a full forwarding address from the tenants.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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, whichever is the later, 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.

The tenants argue that they did give the landlord there forwarding address on September 30, 2011 and a copy of the business card has been provided in the landlords evidence. The landlord argues that the tenants did not give a full forwarding address until October 17, 2011. I have considered these arguments and find the tenants did provide a forwarding address on September 30, 2011. This was an address minus its full postal code but was an address that the landlords could have used to return the

security deposit to the tenants to ensure the landlords met the requirements under s. 38 of the *Act*. If the letter sent to the tenants had been returned to the landlords in the event the post office deemed it to be undeliverable then the landlords' would have had proof that the address provided by the tenants was inadequate. I also find the landlords did not mitigate their loss by looking up the last three letters of the tenants' postal code with Canada Post.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated September 30, 2011. As a result, the landlords had until October 15, 2011 to return the tenants security and pet deposit. I find the landlords did not return the security deposit or pet deposit within this time frame. Therefore, I find that the tenants have established a claim for the return of double the security deposit and pet deposit to the sum of **\$4,200.00** pursuant to section 38(6)(b) of the *Act*.

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

Double the security and pet deposits	\$4,200.00
Less amount already returned to the tenants	\$2,100.00
Filing fee	\$50.00
<b>Total amount due to the tenants</b>	<b>\$2,150.00</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 **\$2,150.00**. The order must be served on the respondents 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: January 06, 2012.

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Residential Tenancy Branch