



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – MNSD

For the landlord – MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants and landlords applications. The tenants have applied for the return of double their security deposit less the amount returned by the landlord. The landlord has applied for an Order permitting the landlord to keep all or part of the tenants' security deposit and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord attended the conference call hearing and gave sworn testimony. 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.

### Issues To Be Decided

- Are the tenants entitled to receive double the security deposit less the amount already returned?
- Is the landlord entitled to keep the balance of the security deposit?

### Background and Evidence

Both parties agree that this tenancy started on July 01, 2008. This was a fixed term tenancy for one year which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit at the end of the tenancy was \$1,240.00 per month and was due on the first of

each month. The tenants paid a security deposit of \$600.00 on June 05, 2008. The tenants moved from the rental unit on May 31, 2011.

The tenant testifies the landlord returned part of their security deposit of \$467.30 on June 25, 2011 in person and deducted the sum of \$137.22 for alleged damages. The tenant attending testifies that they gave the landlord their forwarding address in writing on July 13, 2011. The tenant testifies that they did not authorise the landlord to make any deductions from their deposits and question the reasons given on the deposit deduction list as to why the landlord made these deductions.

The tenants seek to recover double their security deposit less the \$467.30 as it was not returned to them within 15 days of the landlords receiving their forwarding address in writing.

The landlord testifies that a move in condition inspection report was completed at the start of the tenancy but only a walk through was completed at the end of the tenancy. The landlord submits that there was some damage caused to the unit some of which they have charged the tenants the sum of \$137.22 and some damage was not charged for. The landlord states this portion of the deposit was withheld to cover the cost of these damages. The landlord states he was not fully aware of the fact they had to apply to keep the deposits in accordance to the *Residential Tenancy Act* and feel the landlord has acted in a fair manner towards the tenants regarding the security deposit deductions.

### Analysis

At the hearing I advised the parties that the tenants would only be entitled to double the unreturned portion of the security deposit. However, on reviewing the provisions of the *Act* and the Residential Tenancy Policy Guidelines I have determined that this advice was not the correct approach and my oral decision is retracted. Section 38 of the *Act* states 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 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 then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

S. 35 (1) 35(3) and 35(4) of the *Act* states:

(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit,  
or

(b) on another mutually agreed day.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

S. 36 (2) (c) of the *Act* goes on to explain the consequences for the landlord if a Move out condition inspection report is not completed and states:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated on July 18, 2011 (five days after it was sent by registered mail). As a result, the landlord had until July 23, 2011 to either return all the

tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return all the security deposit and has not filed an application for Dispute Resolution to keep the deposit until October 25, 2011. I further find as the landlord did not complete a move out condition inspection in accordance to the regulations that the landlord has extinguished his right to make a claim against the security deposit for damage to the rental unit.

The proper approach, as set out under s. 38 of the *Act* and #17 of the Residential Policy Guidelines is that the security deposit is doubled plus any interest accrued on the original amount and the returned portion is deducted from that amount. Therefore, I find that the tenants are entitled to claim the following amount as set out below pursuant to section 38(6)(b) of the *Act*.

Double the security deposit	\$1,200.00
Accrued interest on the original amount	\$4.52
Less amount already returned	(-\$467.30)
<b>Total amount due to the tenants</b>	<b>\$737.22</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 **\$737.22**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed without leave to reapply. The landlord must bear the cost of filing his own application.

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: November 08, 2011.

---

Residential Tenancy Branch