



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the Tenants for a monetary order for return of the security deposit paid to the Landlord. The Tenants waived the doubling of the deposit.

The Tenants served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on January 27, 2012. Mail is deemed served five days after sending, under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the Tenants named a second person as Landlord in their Application, however, the Tenancy Agreement sets out that the only Landlord is the one who appeared for this Hearing. Therefore, I have amended the style of cause accordingly.

### Issue(s) to be Decided

Has there been a breach of section 38 of the *Residential Tenancy Act* (the "Act"), by the Landlord?

### Background and Evidence

The parties entered into a written tenancy agreement for a tenancy that was to begin on September 1, 2011. The Tenants paid a security deposit of \$475.00 in about the middle of August 2012. The Tenants vacated the premises on or about August 25, 2011.

The Landlord allowed the Tenants to move some of their property in prior to September 1, 2011. The Tenants decided they did not want to continue with the tenancy because they did not like the behavior of the second person (described above), in particular the use of foul language around their young child.

The Tenants returned the key to the rental unit to the Landlord. They provided the Landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The Landlord acknowledged receipt of this letter and testified she wrote to the Tenants with an explanation of why they were not getting the security deposit back. She further testified that the Tenants had not paid \$475.00 for a deposit, but had paid \$425.00 for the deposit and \$50.00 for a month of cable. I note the tenancy agreement sets out that the security deposit is \$475.00.

The Landlord also testified that she gave the deposit to someone else and they have the deposit money. I note the Landlord's name is set out in the tenancy agreement as the person who attended the hearing as the landlord.

The testimony of the Tenants was that the Landlord did not perform either incoming or outgoing condition inspection reports.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of section 38 the Act.

There was no evidence to show that the Tenants had agreed in writing that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlord extinguished her right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Based on the tenancy agreement and the testimony of the Tenants, I also find that the deposit paid was \$475.00.

### Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of \$475.00, comprised of the security deposit.

The Tenants are given a formal 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, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as provided under the Act, and 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: March 27, 2012.

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Residential Tenancy Branch