



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD, FF

### Introduction

This hearing was scheduled in response to an application by the tenants for a monetary order for compensation reflecting return of the original security deposit / and recovery of the filing fee. The landlord / respondent attended the hearing at the scheduled start time of 11:30 a.m. on March 26, 2012, and gave affirmed testimony. However, as at 11:40 a.m. the tenants / applicants had still not appeared.

### Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the two (2) year fixed term of tenancy is from July 1, 2010 to June 30, 2012. Monthly rent of \$1,175.00 is payable in advance on the first day of each month, and a security deposit of \$587.50 was collected. While there is no copy of a move-in condition inspection report before me in evidence, the landlord testified that one was completed at the start of tenancy.

Arising from their purchase of a house, the tenants gave notice by e-mail dated October 25, 2011, to end tenancy effective November 30, 2011. Thereafter, the tenants paid rent to November 30, 2011 but had generally vacated the unit by November 21, 2011. The tenants found new renters for the unit who wished to move in as soon as possible, and it appears that the new renters began moving some of their possessions into the unit as early as November 21, 2011.

Before the tenants had removed all their belongings, and before completion of the cleaning and gardening, the landlord and the tenants conducted a preliminary move-out condition inspection together on November 23, 2011. However, the landlord required that a further and final move-out condition inspection be undertaken after such time as all of the tenants' belongings had been removed and after the cleaning and gardening

had been completed. In this regard, the landlord requested that the tenants contact her when these tasks had been completed.

The tenants and the new renters entered into direct communication with each other in regard to the completion of cleaning, gardening and the transfer of keys to the unit. In summary, it appears that the tenants and the new renters agreed between them that the new renters would undertake themselves to complete the necessary cleaning and gardening.

Having not heard from the tenants, the landlord sent them an e-mail dated December 15, 2011, in which she informed them that she would “arrange for re-inspection of the property with the new tenant and the cost of rectifying any items outstanding will be deducted from your damage deposit.”

Subsequently, it appears that the landlord undertook a move-out condition inspection on or about January 18, 2012, without the participation of the tenants, and about one and one half months after the time when the new renters had taken possession of the unit. There is no copy of a move-out condition inspection report before me in evidence.

While the tenants provided the landlord with their forwarding address and requested the return of their security deposit by way of e-mail dated November 29, 2011, the landlord has not presently returned the security deposit. It was not until March 21, 2012 when the landlord filed her own application for dispute resolution (file # 784274); the hearing in response to the landlord’s application is scheduled to commence at 11:00 a.m. on April 27, 2012.

### Analysis

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit. Further, this section of the Act provides that the landlord may retain an amount from the security deposit if, “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

In the circumstances of this dispute, the landlord has neither returned the security deposit nor filed an application for dispute resolution within 15 days after the end of

tenancy on November 30, 2011. Further, there is no evidence before me that the tenants gave the landlord written consent to retain any portion of the security deposit.

The tenants have applied for a monetary order limited to compensation in the combined amount of the original security deposit of \$587.50, and the \$50.00 filing fee. Based on the documentary evidence and in the absence of an appearance at the hearing or testimony from the tenants, I find that the tenants have established entitlement to the specific amount claimed in their application which is \$637.50 (\$587.50 + \$50.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$637.50**. Should it be necessary, this order may be served on the landlord, 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 *Residential Tenancy Act*.

Dated: March 26, 2012.

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Residential Tenancy Branch