



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF, O

### Introduction

This is an Application by the Tenants for a monetary order for return of the security deposit and recovery of the filing fee.

The Tenant BS attended the hearing and provided affirmed testimony that he served each of the Landlords, by registered mail with the Application for Dispute Resolution and Notice of Hearing on February 10, 2012, and provided the customer receipt/tracking slip from Canada Post as evidence.

I find that the Landlords were served the Application and Notice of Hearing in accordance with section 88 of the *Residential Tenancy Act* (the "Act").

The Landlords did not participate in the conference call hearing. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlords?

### Background and Evidence

Tenant BS testified that they paid the Landlords a security deposit of \$750.00 when the tenancy commenced. The Tenants provided into evidence a copy of the receipt for the security deposit paid to the Landlords. The Tenant BS stated that the monthly rent was \$1,500.00 per month. Tenant BS stated the tenancy commenced on January 01, 2010 and ended on January 01, 2012. The Tenants provided into evidence, a copy of the move out inspection report that they completed with the Landlords agent MD on January 01, 2012, which contains the Tenants' forwarding address. The Tenants also provided a copy of the tenancy agreement into evidence.

The Tenants stated that they provided the Landlord their forwarding address in writing on the move out inspection report on January 01, 2012. The Tenants stated they did not receive the security deposit. The Tenants stated that they sent the Landlord text messages also requesting that their security deposit be returned. The Tenants stated that the Landlords did not return their security deposit in 15 days, and then only returned a portion of the security deposit. The Tenants stated that the Landlords

withheld \$100.00 from their security deposit for alleged carpet cleaning, however, the Landlords have not provided them a receipt to them.

The Tenants stated that they did not authorize any deductions from the security deposit. The Tenants stated that they received a cheque for \$650.00 from the Landlords on February 03, 2012 postmarked as mailed January 30, 2012. The Tenants provided a copy of the cheque and envelope with postmark received from the Landlords into evidence. The Tenants filed for dispute resolution on February 07, 2012.

The Tenants are seeking return of double their security deposit in accordance with the Act, and the filing fee for their application.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

The Tenants provided the move out inspection report of January 01, 2012, signed by the Tenants and the Landlords' agent MD which shows that the Tenants did not agree to any deduction from the security deposit. The move out inspection report shows that the Tenants provided their written forwarding address to the Landlords' agent on January 01, 2012 for their security deposit to be sent to.

There was no evidence showing that the Landlords had returned the full amount of the security deposit or that the Landlords applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants. The Tenants evidence supports that the Landlords returned only a portion of their security deposit, withholding \$100.00, and that a cheque for \$650.00 was mailed to the Tenants on January 30, 2012 as stated on the postmark on the envelope sent by the Landlords.

I find that the Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords have the ability to simply keep any portion of the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlords 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 of the security deposit and the Tenants stated that they did not authorize any deduction from the security deposit, and the move out condition inspection report also shows no written authorization from the Tenants for an amount to be deducted. Therefore, I find that the Landlords are not entitled to retain the \$100.00 which they have withheld from the security deposit and failed to return to the Tenants.

Section 38(6) of the Act requires that a landlord pay a tenant double their security deposit if the landlord has failed to return the security deposit to the tenant within 15 days of receiving the tenant's forwarding address and has failed to apply for dispute resolution within that time frame. I find that the Tenants are entitled to \$850.00, which consists of double the security deposit ( $\$750.00 \times 2 = \$1,500.00$ ) less the amount returned by the Landlord by mail on January 30, 2012 (\$650.00).

I find that the Tenants have succeeded in their Application, as a result they are entitled to recover their \$50.00 filing fee for this Application. As a result, the Tenants are entitled to a monetary order against the Landlord in the total amount of \$900.00.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of \$900.00, comprised of double the security deposit, less the amount returned to date ( $\$750.00 \times 2 = \$1,500.00 - \$650.00 = \$850.00$ ) and the \$50.00 filing fee.

The Tenants are granted a formal monetary order for **\$900.00** and the Landlords must be served with a copy of this order as soon as possible. Should the Landlords 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.

The order is attached to the Tenants' copy of this decision.

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: April 16, 2012.

---

Residential Tenancy Branch