



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and two agents for the landlord

At the outset of this hearing the agents for the landlord identified that they had never received a copy of a previous decision regarding the security deposit for this tenancy that was rendered on November 23, 2011. In that decision the Dispute Resolution Officer (DRO) dismissed the tenants' Application for double the security deposit with leave to reapply.

The DRO found the tenants had failed to provide the landlord with their forwarding address in writing and noted that because the tenants confirmed their current address in that hearing the landlord would have been considered to have received the forwarding address as of November 23, 2011.

I confirmed with the agents for the landlord that the decision would have been sent to their local headquarters office and they acknowledged that they do not always receive copies when the decisions are sent to that address. With the tenant's permission I confirmed that I would provide the landlord's agent with a copy of that decision attached to this decision.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit, pursuant to Section 38 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on April 20, 2011 for a 1 year and 10 day fixed term tenancy agreement for the monthly rent of \$870.00 due on the 1<sup>st</sup> of each month with a security deposit of \$430.00 paid on April 30, 2011.

The tenancy ended when the tenants vacated the rental unit on June 16, 2011 after the landlord had issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord's agent testified the tenants were issued the notice on June 2, 2011 but that the tenants never contacted the landlord at any time to discuss what they would be doing and the first time the agent was made aware the tenants were moving out was when she saw them moving out.

The landlord's agent testified she asked the male tenant if he would be willing to complete a move out inspection at the time and he agreed. The male tenant confirmed he had agreed to this. The agent indicated she would return in 5 or 10 minutes and when she did the tenants and their movers were gone.

The female tenant testified that she could not wait as the movers did not know how to get to their new accommodation and the tenants had to be there to let the movers in to their new home. She did not explain why both the male and the female tenant had to leave or why one of them could not have remained to complete the inspection with the landlord's agent.

The female tenant also testified that the day after they had moved out they tried to contact the property manager but she was not available. The landlord's agent testified that she was in the office all day and the tenants did not come by nor did they call.

The female tenant testified that the reason they didn't pay rent and moved out was because the landlord had been unresponsive to complaints they had about many issues in the residential property including a mouse problem. She further complained that the landlords were unprofessional and did not deal with them in a respectful manner.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From above, I accept the previous ruling that the landlord received the tenants' forwarding address on November 23, 2011, several months after the end of the tenancy. As such, the latest the landlord should have returned the deposit or filed an Application for Dispute Resolution seeking to claim against the deposit would have been December 9, 2011.

However, Section 35 states that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on a mutually agreed day. The section goes on to say the landlord must offer the tenant at least 2 opportunities for the inspection.

I find from the testimony of both parties that the landlord offered to complete the move out condition inspection and that by their actions of failing to confirm with the landlord the date of their pending move; of leaving the residential property after agreeing to complete the inspection; and not providing the landlord with a forwarding address until November 2011 the tenants deprived the landlord from providing a 2<sup>nd</sup> opportunity to complete the move out condition inspection report.

Section 36 of the *Act* states that right of a tenant to the return of a security deposit is extinguished if the landlord has provided 2 opportunities to the tenant for an inspection and the tenant has not participated on either occasion. As the tenants prevented the landlord from providing a second opportunity for an inspection, I find the landlord has fulfilled all obligations under Section 35 and the tenants have extinguished their right to return of the security deposit.

### Conclusion

For the reasons noted above, I dismiss the tenants' Application in its entirety without leave to reapply.

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 17, 2012.

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Residential Tenancy Branch