



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, MNSD, FF

### 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 the landlord. Despite having arranged for a witness the landlord did not call the witness for any testimony during the hearing.

At the outset of the hearing the tenants clarified their Application for return of double the security deposit plus interest and for a \$300.00 over payment of their utilities account with the landlord, for a total of \$1,085.56.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of double the amount of the security deposit; for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 36, 38, 39, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided into evidence a copy of tenancy agreement signed by the parties on March 15, 2000 for a 1 year fixed term tenancy that began on April 1, 2000 and converted to a month to month tenancy on April 1, 2001 for a monthly rent at the end of the tenancy of \$897.00 that had been due on the 1<sup>st</sup> of each month with a security deposit of \$362.50 paid.

The tenancy ended on August 31, 2010 after the landlord obtained an order of possession as having cause to end the tenancy. The parties agreed the tenants provided the landlord with the forward address in writing on or about August 23, 2010.

The tenant's testified the landlord did not schedule a move out condition inspection. The tenants submitted an email dated August 30, 2010 from the landlord stating that she will be attending the rental property at 9:00 a.m. with a handyman, there is no mention in the email about a condition inspection. The landlord submitted into evidence

a letter addressed to the tenants and dated August 26, 2010 suggesting a time of 1:00 on August 31, 2010 as the time to conduct a move out condition inspection.

Attached to the letter was a copy of a Notice of Final Opportunity to Schedule a Condition Inspection that did not include the date or time of the move out inspection. The landlord testified that she had not filled this section in because she attached it to the letter she left for the tenants in their mailbox and she was asking the tenants if that time worked for them.

The landlord testified that she served the Notice to the tenants by personally putting it in their mailbox. The tenants testified they have never seen either of the two documents and the landlord never offered them an opportunity to complete the move out inspection.

The tenants testified that during their tenancy they met the landlord out in the community one day and the landlord told them she was going to be giving them a \$300.00 utility refund due to an overpayment made during the tenancy. The tenants also stated that they never did receive any refund from the landlord despite repeated requests from the tenants in writing.

The tenants testified they never received copies of the utility bills during the tenancy despite repeated requests to the landlord. The tenants did not provide any copies of documentary communication between the parties in regard to either of these two issues during the tenancy.

The landlord testified she provided all copies of utility bills during the tenancy by placing them in the tenants mail box and that she does not recall having any conversation with the tenants indicating that she would be providing them with a refund for an overage.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the tenants' claim for a refund for utilities, as the parties disagree with the events that led to the tenants' belief that they were going to receive a refund and the tenants have provided no corroborating evidence, I find the tenants have failed to establish they are entitled to any such refund.

Section 35 of the *Act* requires a landlord and tenant to complete a move out condition inspection on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The section goes on to say the landlord must provide the tenant with two opportunities to attend an inspection, in accordance with the Residential Tenancy Regulation.

Residential Tenancy Regulation Section 17 states the landlord must offer a first opportunity by proposing one or more dates, if the tenant is not available the tenant must propose an alternative time to the landlord and the landlord must propose a second opportunity by providing the tenant with a notice in the approved form.

In regard to the landlord's assertion that she served the tenants with a Notice of Final Opportunity for a Condition Inspection, as the tenant's testified they did not receive any such correspondence; the landlord's failure to provide corroborating evidence to establish she served the tenants with the Notice of Final Opportunity; and in light of the email of August 30, 2012, I find the landlord has failed to establish she provided the tenants with opportunities to attend a condition inspection as required under Section 35.

Section 36 states that if a landlord has failed to comply with Section 35, as I have found in the case before me, the landlord extinguishes her right to claim against the security deposit. As such the landlord must return the security deposit.

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.

As the parties agree the landlord had received the tenants' forwarding address prior to the end of the tenancy on August 31, 2010 and since the landlord had extinguished her right to claim against the security deposit, I find the landlord had until September 15, 2010 to return the security deposit, in full to the tenants.

Further, as the landlord has failed to return the security deposit, I find the tenants are entitled to double the amount of the security deposit. As per the Residential Tenancy Policy Guideline #17 interest owed is calculated only on the original security deposit and not the doubled amount.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$780.28** comprised of \$725.00 double the amount of the security deposit; \$30.28 interest; and \$25.00 of the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 30, 2012.

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Residential Tenancy Branch