



# 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 the return of double the security deposit and to recover the filing fee for the Application.

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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Did the Landlord breach the Act, entitling the Tenants to double the security deposit under section 38 of the Act?

### Background and Evidence

On or about September 17, 2010, the Tenants provided the Landlord with a security deposit of \$532.50.

The tenancy ended on February 29, 2012.

The Tenants vacated the rental unit and an outgoing condition inspection report was performed on February 29, 2012. At the time of the outgoing report the Tenants provided the Landlord with their forwarding address to return the deposit to, by writing it on the bottom of a page in the report.

The outgoing report indicates the Tenants were owed \$532.50 for the security deposit and \$45.00 for a rent overpayment. Both parties agree that the Tenants were to pay \$95.00 for carpet cleaning to the Landlord from the deposit and overpayment. Both parties agree the amount to be returned to the Tenants was \$482.50.

According to the testimony of the appearing Tenant, the Tenants called the Agent for the Landlord several times after they vacated the rental unit, wondering where the security deposit was.

According to the testimony and evidence submitted, the Landlord had prepared a cheque for the Tenants on March 7, 2012. It was sent in an envelope, dated stamped March 9, 2012, by the postal service handling the mail. I note the Landlord's head office, who apparently issued the cheque, is in the United States. Nonetheless, mail sent in this manner is deemed served five days later.

The Agent for the Landlord testified that in the middle of March the Tenants contacted the office for the Landlord and explained they had not received their security deposit back. The Agent understood the mail was coming from the United States and thought this might be the cause for the delay.

In fact, the letter containing the cheque was returned to the Landlord's office, as the forwarding address was incorrect on the letter.

In evidence the Landlord supplied a copy of the envelope addressed to the wrong address. Some of the numbers and letters in the address are incorrect. The Agent for the Landlord testified that the forwarding address on the outgoing report was very faint and hard to read, and this lead to an incorrect interpretation of the address.

The Agent for the Landlord contacted the Tenants by telephone when they learned of the returned envelope containing the cheque, on or about March 28, 2012. The Tenants personally picked up the cheque at the local office of the Landlord either the next day or a day or two later.

In evidence the Tenant provided a photocopy of the outgoing condition inspection report. There is both faint writing and fresh ink on the report.

The Tenant testified that the fresh ink on the report was her writing. The Tenant testified she took a felt pen and traced over the address and dollar amounts in the report to make it easier to read when she provided it in evidence.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I am unable to find the Landlord has breached the Act in this case. I dismiss the Tenants' Application, without leave to reapply.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, here the Tenants, have the burden of proving their claim.

Proving a claim requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the Tenants have insufficient evidence of what address was provided to the Landlord in the outgoing report. By taking evidence and writing over it with a felt pen the Tenants themselves have shown the written address was, at the very least, hard to read.

Furthermore, they have altered evidence to the point where the original writing cannot be read. Therefore, I find the Tenants have failed to provide evidence they supplied the correct forwarding address to the Landlord, and consequently, they have failed to prove the Landlord breached the Act.

I find the Landlord acted in good faith and did send the security deposit back within the required timeframes of the Act. The address the Landlord used was close to the correct one, however, the incorrect number and letters were enough to render the letter undeliverable. I do not find this is the fault of the Landlord, rather, this is a simple accident and not a breach of the Act. The Tenants have the deposit and have cashed the cheque, and therefore, they have suffered no loss due to a breach by the Landlord.

For these reasons, I dismiss the Tenants' Application, without leave to reapply.

This decision is final and binding on the parties, except as otherwise 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: May 30, 2012.

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Residential Tenancy Branch