



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This is an application by the Tenant for a monetary order for return of the security deposit and the pet damage deposit. The Tenant did not waive his right to double these deposits in the Application or at the hearing.

The Tenant and an Advocate appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant and Advocate testified that they served the Landlords by sending them the Application and Notice of Hearing by Purolator courier on June 19, 2012. Despite this the Landlords did not appear at the hearing. Although using a courier is not a recognized method of service under the Act, I find there is a substantial probability that the Landlords were effectively served by using a courier. Therefore, I find that the Landlords have been served for the purposes of the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began in August of 2005, and the Tenant paid the Landlords a security deposit of \$225.00 and a pet damage deposit of \$200.00, at that time.

On November 3, 2011, there was a fire in the building where the rental unit was located.

The Tenant vacated the subject rental unit on November 3, 2012, due to the fire and moved into a different rental building.

The Tenant testified that the Landlords returned his rent money but have not paid him back his security and pet damage deposits. According to the Tenant and his Advocate, the Landlords allege they sent him a cheque with a refund for his deposits, however, the Tenant testified he has not received this payment.

The Tenant testified he served the Landlords with his forwarding address by writing it on a form supplied by the Red Cross, which was then provided to the Landlords, about the end of November 2011. The Tenant submits this is how they had the address to send him his rent refund.

The Tenant testified he did not sign over a portion of the security deposit to the Landlords.

The Tenant testified that that there were no written incoming or outgoing condition inspection reports performed.

### Analysis

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

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit or pet damage deposits, plus interest.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security and pet damage deposits, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit or pet damage deposit, pursuant to sections 24(2) and 36(2) of the Act.

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 deposits are held in trust for the Tenant by the Landlords. The Landlords may only keep all or a portion of the deposits through the authority of the Act. Here I find that the Landlords did not have authority under the Act to keep any portion of the security or pet damage deposits.

### Conclusion

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$865.05**, comprised of double the security and pet deposits ( $2 \times 425.00 = 850.00$ ), and the interest on the original amounts held of \$15.05.

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. This Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless 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 Act.

Dated: August 20, 2012.

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Residential Tenancy Branch