



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This is an application by the tenant for a monetary order for return of the security deposit and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on June 29, 2012, a Canada post tracking number was provided as evidence of service, the landlord did not appear. On July 19, 2012, the landlord filed evidence for today's hearing. I find that the landlords have been duly served in accordance with the Act.

The tenant gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit?

### Background and Evidence

The tenants paid a security deposit of \$525.00 on February 1, 2012. The tenants vacated the premises on May 31, 2012. The tenants provided the landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The testimony of the tenant was that the landlords have returned the amount of \$515.00 however, they still hold \$10.00 from the security deposit without her consent. The tenant stated she only wants that amount of \$10.00 returned to her, plus her filing fee of \$50.00. The tenant waives any penalty against the security deposit.

### 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.

There was no evidence to show that the tenants had agreed, in writing, that the landlords could retain any portion of the security deposit, 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 deposit, plus interest.

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 does the landlord have the ability to simply keep 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. Here the landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlords are not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. However, pursuant to Section 17 of the Policy Guidelines the tenant waived that right.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of \$60.00, comprised of \$10.00 of the security deposit held and the \$50.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord 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.

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: September 21, 2012.

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Residential Tenancy Branch