



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for return of their security deposit, and to recover the filing fee.

The tenants gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The tenants testified that they served the landlord with notice of the hearing via registered mail on June 30, 2012 which was addressed to the landlord's name and address. The tenants stated that the package was confirmed as successfully delivered on July 4, 2012 via the online tracking information, which also indicated that the landlord signed for the package. I find the landlord was served with notice of the hearing in accordance with the *Act* based on the undisputed testimony of the tenants.

### Preliminary Matter

During the hearing, the tenants confirmed that they were only seeking the return of their initial security deposit of \$995.00 and their pet damage deposit in the amount of \$995.00, for a total of \$1,990.00. This was considered a waiver of their right to the return of double the security deposit and pet damage deposit in accordance with Residential Tenancy Branch Policy Guideline 17.

### Issues to be Decided

- Did the landlord breach section 38 of the *Act*?
- Are the tenants entitled to a monetary order for the return of their security deposit and pet damage deposit?

### Background and Evidence

The tenancy began on November 20, 2009. A six month fixed term tenancy agreement was to expire on May 31, 2010, however, was extended by consent of both parties until June 30, 2010. Rent in the amount of \$1,990.00 was due on the first day of each month. A security deposit of \$995.00 and pet damage deposit of \$995.00 was paid by the tenants at the start of the tenancy.

The tenants stated that upon vacating the rental unit on June 30, 2012 they provided their written forwarding address on a piece of paper and hand delivered it to the landlord on the same date. The landlord provided a cheque to the tenants in the amount of \$1,990.00, the full amount of the security deposit and pet damage deposit; however emailed the tenants on July 2, 2012 asking them not to cash the cheque as the landlord allegedly found some damage and would keep them informed. Subsequently, the tenants received a cheque in the mail from the landlord on July 13, 2012 for the reduced amount of \$1,480.00 and an invoice for cleaning and an estimate for a new paint job on the balcony. The tenants confirmed that they did not agree to the landlord deducting any amount from either deposit.

The tenants explained that they did not file for return of their security deposit and pet damage deposit until June 29, 2012 due to male tenant being involved in a serious accident. The male tenant stated that he suffered many injuries which made recovery challenging and continues with his recovery.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I **find** that the landlord has breached of section 38 of the *Act*.

The tenants filed their application within two years of the end of the tenancy in accordance with section 60 of the *Act*. There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date.

There was also no evidence to show that the landlord 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.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit and pet damage deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the *Act*, such as an order from a Dispute Resolution Officer, or the written agreement of the tenants. In the matter before me, **I find** the landlord did not have any authority under the *Act* to keep any portion of the security deposit or pet damage deposit and did not return the full security deposit and pet damage deposit to the tenant within 15 days in accordance with the *Act*.

Based on the testimony of the tenants, **I find** that the tenants have waived their right to the return of double the security deposit and pet damage deposit under the *Act* by specifically stating during the hearing that they are only seeking the return of \$1,990.00. **I caution** the tenants that they should have cashed the second cheque from the landlord in the amount of \$1,480.00. The tenants could have filed for a monetary order for the difference if they felt they were entitled to the full amount, however, by not cashing the cheque, the tenants failed to minimize their loss pursuant to section 7 of the *Act* as the cheque is now stale dated and cannot be cashed. The tenants' only remedy after the cheque becomes stale dated is to seek a monetary order under the *Act* when seeking the return of their deposits.

**I find** the tenants are entitled to a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,040.00** consisting of \$995.00 for the security deposit and \$995.00 for the pet damage deposit, and \$50.00 for the filing fee as the tenants were successful in their application.

### Conclusion

The tenants are entitled to a monetary order pursuant to section 67 of the *Act*, in the amount of \$2,040.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: September 19, 2012

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Residential Tenancy Branch