



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call in response to the tenants' application to recover double the security deposit.

The tenants and their advocate and the landlord attended the conference call hearing, gave sworn testimony. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to recover double the security deposit?

### Background and Evidence

The parties agree that this month to month tenancy started on March 1, 2012. The tenants paid a monthly rent of \$950.00 which was due on the first day of each month in advance. The tenants paid a security deposit of \$475.00 on March 1, 2012. The parties also agree that the landlord received the tenants forwarding address in writing by June 9, 2012. The tenancy ended on April 30, 2012.

The tenants testify that the landlord returned \$40.00 of the security deposit and this cheque is dated June 18, 2012. The tenants advocate testifies that a letter was sent to the landlord on June 04, 2012 requesting the landlord to return the tenants security deposit. This letter also contained the tenants forwarding address in writing.

The tenant seeks to recover double the security deposit as the landlord did not return it within 15 days of the date the landlord received their forwarding address in writing.

The landlord disputes the tenants claim. The landlord testifies that the tenants did not leave the rental unit clean and the landlord used \$435.00 of the security deposit to have this work done to prepare the unit for new tenants. The landlord testifies that he did return the \$40.00 within the 15 days of receiving the tenants forwarding address in writing. The landlord agrees he did not have written permission from the tenants to keep all or part of the security deposit

The landlord testifies that at the start of the tenancy he did a walk through with the tenants but agrees he did not complete a move in condition inspection report.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), of the *Act* require a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In

failing to complete the condition inspection report when the tenants moved in, I find the landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(a) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security deposit has been extinguished the landlord is not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenants within 15 days of either the end of the tenancy or the date the tenants gives the landlord their forwarding address in writing, whichever is the later date, the landlord must pay double the security deposit to the tenants.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated June 04, 2012. This was sent by mail and would therefore be deemed to have been received by the landlord on June 09, 2012. As a result, the landlords had until June 24, 2012 to return the tenants security deposit. I find the landlord only returned \$40.00 on June 18, 2012. Therefore, I find that the tenants have established a claim for the return of double the security deposit to the sum of \$950.00, less the \$40.00 already returned, pursuant to section 38(6)(b) of the *Act*.

The tenants are entitled to a Monetary Order as follows:

Double the security deposit	\$950.00
Less amount returned	(-\$40.00)
<b>Total amount due to the tenants</b>	<b>\$910.00</b>

### Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$910.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 15, 2012.

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Residential Tenancy Branch