



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF (MNDC)

### Introduction

This hearing was convened by way of conference call in response to the tenants' application to recover their security deposit. The tenants also seek to recover the utility payment owed by the landlord and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and a translator for the landlord attended the conference call hearing and gave sworn testimony. The 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 the security deposit?
- Are the tenants entitled to a Monetary Order to recover the landlord's share for utility payments?

### Background and Evidence

The parties agree that this tenancy started on August 30, 2009 although the tenant states they did not move in to the rental unit until September 01, 2009. Rent for this unit was \$1,800.00 per month plus two thirds of utilities. Rent was due on the 1<sup>st</sup> of each

month. The tenants paid a security deposit of \$900.00 on August 22, 2009. The tenant gave the landlord a forwarding address in writing on July 25, 2012. No move in or move out condition inspection was completed at the start or end of the tenancy.

The tenant testifies that the utilities were in their name for the whole house. The other tenant's share of these was one third and the tenant had an arrangement with the landlord to deduct the cost of the other tenant's utilities from their rent each month. The tenant testifies that the landlord served them with a Two Month Notice to End Tenancy for landlord's use of the property and the tenants therefore did not pay the last month's rent in compensation for that notice. The tenant testifies that this meant when the final utility bill came in, the tenants were not able to deduct the others tenants one third share of the bill from their rent. The tenant testifies that the bill came to \$1,156.71 and a copy of this bill was given to the landlord. The tenant seeks to recover the sum of \$385.56 from the landlord for the other tenants share.

The tenant testifies they moved from the rental unit on May 03, 2012. The tenant testifies that they did not give the landlord permission to make any deductions from the security deposit; however the landlord deducted the sum of \$385.56 for the utility bill and the sum of \$200.00 for garbage. The tenant testifies the landlord returned the sum of \$334.00 of the security deposit by cheque dated August 11, 2012.

The landlord agrees that they received the tenants forwarding address in writing on July 25 or 26, 2012. The landlord testifies that the tenant was sent a cheque on August 11, 2012 for the sum of \$334.00. The landlord testifies that the sum of \$385.56 was deducted in error as this is the amount owed to the tenant for the utility bill.

The landlord testifies that the tenants left garbage at the rental unit and did not move out until later in May, 2012 without payment of rent for May. The landlord testifies that this is why they deducted these sums from the security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The *Residential Tenancy Act* s. 38 states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on May 03, 2012 and the landlord had a forwarding address in writing by July 26, 2012. The landlord therefore had until July 10, 2012 to return the security deposit. As the landlord failed to complete either a move in or a move out condition inspection report with the tenants at the start or end of the tenancy then the landlords right to file a claim to keep the deposit has been extinguished pursuant to s. 24(2)(a) and s. 36(2)(a) of the *Act*.

Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the sum of **\$1,800.00** to the tenant pursuant to s. 38(6)(b) of the *Act*; as the landlord has returned the sum of \$334.00 this amount will be deducted from the tenants' monetary award.

With regard to the tenants claim to recover the sum of **\$385.56**; the landlord does not dispute that this amount is owed to the tenant for the utility bill and states that an error was made when this amount was deducted from the security deposit. Therefore I find the tenant is entitled to recover this sum from the landlord pursuant to s. 67 of the *Act*. As the tenants have been successful with their claim I find the tenants are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the tenant for the following sum:

Double the security deposit	\$1,800.00
Utilities	\$385.56
Filing fee	\$50.00
Less security deposit already returned to the tenants	(-\$344.00)
Total amount due to the tenants	\$1,891.56

### 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 **\$1,891.56**. 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: November 26, 2012.

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Residential Tenancy Branch