



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord's agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on October 1, 2010 as a 1 year fixed term tenancy that converted to a month to month tenancy on October 1, 2011. The monthly rent at the end of the tenancy was \$869.55 due on the 1<sup>st</sup> of each month with a security deposit of \$425.00 paid. The tenancy ended on August 31, 2012.

The tenants testified that they had completed a move out inspection with the landlord's agent on August 31, 2012 at which time they provided the agent with their forwarding address and that they told them that he would be marking the inspection report with a request to return the full deposit to the tenants.

The tenants testified they received from the landlord a cheque on September 12, 2012 in the amount of \$280.00 with a letter of explanation stating that they had held back \$145.00 for cleaning.

The landlord's agent testified that after new tenants moved in to the rental unit they identified to the landlord that the blinds needed cleaning and the walls needed painting so the landlord's headquarters held back the \$145.00 for cleaning.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit in full or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the tenants provided the landlord with their forwarding address in writing on August 31, 2012 and that as such the landlord had until September 15, 2012 to return the entire security deposit or file an Application for Dispute Resolution to rent the \$145.00 that the sought for cleaning and painting. A landlord does not have the right to unilaterally decided to withhold any amount from the security deposit.

For these reasons, I find the landlord failed to comply with Section 38(1) of the *Act* and as a result the tenants are entitled to receive double the amount of the security deposit in accordance with Section 38(6).

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$900.00** comprised of \$850.00 double the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I recognize the tenants are still in possession of the cheque dated September 10, 2012 from the landlord in the amount of \$280.00 and I have order the tenants they may cash this cheque. If the tenants are successful in cashing this cheque the \$280.00 will partially satisfy this claim and can be deducted from the total amount of the monetary order.

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: December 10, 2012.

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Residential Tenancy Branch