



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; FF

### **Introduction**

This is the Tenants' application for return of the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that he hand delivered the Notice of Hearing documents and copies of his documentary evidence to the Landlord's agent on October 16, 2012. The Landlord's agent acknowledged receipt of the Notice of Hearing documents, but denied receiving copies of the Tenant's documentary evidence. The Tenants' documentary evidence included copies of the tenancy agreement; a letter from the Landlord to the Tenants dated October 5, 2012, and a copy of the Tenants' ledger. These documents were generated by the Landlord, and therefore the Landlord's agent has copies, and they were referred to during the Hearing. The only other piece of documentary evidence was a written submission from the Tenant. This was not referred to, but the Tenant was invited to provide his evidence orally by way of submissions.

### **Issues to be Decided**

- Are the Tenants entitled to return of the security deposit?

### **Background and Evidence**

This tenancy began on October 4 1, 2010 and ended on September 30, 2012. Monthly rent was \$925.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$463.00 at the beginning of the Tenancy.

There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations at the end of the tenancy. The Landlord stated that he provided the Tenant with a Notice of Final Opportunity to complete the Inspection by posting it to the Tenants' door on September 30, 2012, at 1:00 p.m. The Landlord submitted that the Tenant gave up his right to return of the security deposit because he did not participate in the inspection.

The Tenant stated that he went to the rental property to return the key to the Landlord on September 30, 2012, and waited for the Landlord's agent but he did not come. The Tenant stated he did not see any Notice on the door on September 30, 2012, and that he returned before noon on October 1, 2012, to see if the Landlord's agent was there so he could return the keys. The Landlord's agent was not there, so the Tenant called him and was told to drop the keys in the mail box. The Tenant stated that nothing was said about an inspection during that phone call.

The Tenant stated that the Landlord did not give him any written notice with respect to a condition inspection opportunity.

The Tenant testified that he did not give the Landlord permission to retain any of the security deposit

### **Analysis**

The Landlord submitted that the Tenants had extinguished their right for return of the security deposit under the provisions of Section 36(1) of the Act. In the absence of any documentary evidence, for example: a copy of the Notice of Final Inspection Opportunity, I find insufficient evidence that the Tenants extinguished their right to return of the security deposit and the Tenants' right has not been extinguished.

However, I find that the Tenants' application for return of the security deposit is premature. Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and **after receipt of a tenant's forwarding address in writing**, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Tenants have not given the Landlord their forwarding address in writing. Therefore, I dismiss the Tenants' application **with leave to reapply**.

The Landlord will have 15 days from receipt of this Decision to make an application against the security deposit or return it to the Tenants.

### **Conclusion**

The Tenants' application is dismissed **with leave to reapply**.

The Landlord has **15 days from receipt of this Decision** to make an application against the security deposit or return it to the Tenants.

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: February 05, 2013

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Residential Tenancy Branch

