



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenants for a monetary order for return of double the security deposit.

The tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant's advocate stated the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 17, 2013, a Canada post tracking number was provided as evidence of service. The advocate stated the Canada post tracking history, also confirms the documents were successfully delivered on January 21, 2013. Filed in evidence is a copy of the Canada post tracking history. I find that the landlord has been duly served in accordance with the Act. The landlord has failed to appear.

The tenants appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenants paid a security deposit of \$375.00 on August 28, 2012. The tenant vacated the premises on November 30, 2012.

The advocated stated the tenants on December 7, 2012, provided their forwarding address to the landlord. The landlord responded by sending a cheque to the tenants in the amount of \$37.00.

The tenants testified they did not give the landlord permission to retain any portion of the security deposit. The tenants stated that at the move-out inspection they were told everything was okay. The move-out inspection was not recorded in writing as required by the Act.

The advocate stated she sent by regular mail, a written request to the landlord stating that the tenants were seeking the return of their entire security deposit. The letter also contained the tenants forwarding address. Filed in evidence is a copy of the letter, dated December 17, 2012.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach 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.

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 tenants, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

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 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 through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit..

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act that the landlord pays the tenants the sum of \$750.00, comprised of double the security deposit on the original amount held of \$375.00. The tenants have received \$37.00, that amount will be deducted from the total amount awarded.

The tenants are given a formal order for the balance due of \$713.00, and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced 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: April 08, 2013

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Residential Tenancy Branch

