



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for the return of double their security deposit and recovery of the filing fee paid to bring their application. Both parties participated in the conference call hearing and confirmed that they had received the evidence of the other.

The landlord raised the objection that she was not served with the tenant's evidence until the end of May and did not know until that date that she was permitted to submit evidence. Upon becoming aware that she could submit evidence, the landlord assembled documents and photographs and served that evidence on both the tenants and the Residential Tenancy Branch (RTB).

The landlord acknowledged having received the RTB Fact Sheet, "The Dispute Resolution Process." In that document is a section entitled "Evidence Submissions" in which the second sentence indicates that the dispute resolution officer, a position which is now titled Arbitrator, will consider all evidence submitted by both parties. The Fact Sheet also outlines deadlines for serving evidence and refers readers to other Fact sheets which provide more detail.

Because the Fact Sheet which the landlord acknowledged having received gives information about evidence and because the landlord was not prevented but simply delayed in accepting her evidence, I found that she had not been prejudiced through not having received specific information prior to having received the tenants' evidence in late May.

### Issue to be Decided

Are the tenants entitled to a monetary order as requested?

### Background and Evidence

The relevant facts are in agreement. The tenancy began on June 1, 2012 and ended at some point in February 2013. Although the parties could not agree on the specific date on which the tenants had removed all of their belongings, they agreed that the unit was empty by February 27 at which time the parties conducted a walk-through inspection of the unit. The tenants paid a \$550.00 security deposit at the outset of the tenancy and although the tenancy agreement indicated that a \$100.00 pet deposit had been paid, they agreed that the pet deposit was not paid. The landlord acknowledged having received the tenants' forwarding address via email on February 28.

The landlord submitted documentary evidence to explain why she had not returned the security deposit. At the hearing, I advised the landlord that her evidence would be relevant if she had made a claim against the deposit but was not a defence to the tenants' claim.

### Analysis

Sections 38(1) and (6) of the Act provides as follows.

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenancy ended by February 27, 2013 and that the landlord received the forwarding address on February 28, 2013. Although the Act requires that the address be given in writing, I find that email is equivalent to a written document and as the landlord acknowledged having received the email, I find that the landlord had actual notice of the forwarding address on February 28, 2013, thereby triggering the beginning of the 15 day period referenced in section 38.

I find that the landlord failed to return the security deposit and failed to file a claim against it within 15 days and therefore, pursuant to section 38(6)(b) must pay the tenants double the amount of the security deposit. I therefore award the tenants \$1,100.00 which is double the \$550.00 security deposit.

As the tenants have been successful in their claim, I find that they are entitled to recover the \$50.00 filing fee paid to bring this application for a total award of \$1,150.00.

At the hearing, I advised the landlord that while I could not address the question of damage because she had not filed a formal claim, she is free to file a claim against the tenants to recover the losses she feels she has suffered as a result of the tenancy. I note that the parties attempted to engage in settlement discussions during the hearing in an attempt to eliminate the need for a further hearing, but were unable to arrive at a resolution.

### Conclusion

The tenants are awarded \$1,150.00 and I grant them a monetary order under section 67 for this sum. This 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: June 14, 2013

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Residential Tenancy Branch

