



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1170 Barclay St Inc.  
and [tenant name suppressed to protect privacy]

## **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 agree the tenancy began as a 3 month fixed term tenancy on January 1, 2013 for the monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month with a security deposit of \$650.00 paid on. The tenancy ended on March 31, 2013.

The tenants submit they provided their forwarding address to the landlord on March 28, 2013 via email. The also submit they received \$214.04 of their security deposit back on or about April 14, 2013, along with an explanation of why the landlord was withholding \$435.96.

The landlord testified that he does not recall receiving the tenant's forwarding address via email. The tenants submit that they had sent the landlord their forwarding address originally by text message and he requested that they send it by email.

The tenants submit they did not agree to any deductions from their security deposit and there is no record of the landlord submitting an Application for Dispute Resolution to claim against the deposit.

### 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 less any mutually agreed upon amounts 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.

From the testimony of the tenants I find the landlord had the tenants' forwarding address prior to the end of the tenancy on March 31, 2013 and as a result was required to return the damage deposit in full or file an Application for Dispute Resolution no later than April 15, 2013.

As the landlord did not file an Application for Dispute Resolution; there is no written agreement with the tenants to withhold any amount of the deposit; and the landlord did not return the full deposit to the tenants prior to April 15, 2013 I find the tenants are entitled to double the amount of the full deposit held.

Even if I were to accept the landlord did not receive the tenants' forwarding address by email prior to the end of the tenancy, I find that the landlord was provided with the tenants' forwarding address by way of the tenants' Application for Dispute Resolution served by registered mail on April 19, 2013. As such, the landlord could have returned the balance of the deposit and/or filed an Application to claim against the deposit within 15 days of receiving the tenants' Application. The landlord did neither, by his own testimony.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,135.96** comprised of \$1,300.00 double the security deposit and the \$50.00 fee paid by the tenants for this application less \$214.04 already returned to the tenants.

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.

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: July 12, 2013

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Residential Tenancy Branch

