



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution regarding deductions from a security deposit

The hearing was conducted via teleconference and was attended by the male tenant and the landlord.

The tenant clarified at the outset of the hearing that he was seeking the return of the balance of the security deposit.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for all or part 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 July 1, 2011 as a month to month tenancy for the monthly rent of \$2,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,000.00 paid. The tenancy ended effective March 31, 2013 after the tenants had vacated the rental unit earlier in the month.

The landlord acknowledges that she verbally received the tenants' forwarding address verbally on the weekend of March 30 and 31, 2013 and used that address to return \$702.00 of the security deposit.

The landlord testified that she withheld this amount because the carpets needed cleaning; the fence needed painting as a result of the tenants' dog causing damage to the fence; and NSF charges for bank charges due to late rent payments.

The landlord testified that she did not have permission from the tenants to withhold any monies from the security deposit and that she did not submit an Application for Dispute Resolution seeking to claim against the deposit.

The parties also agreed that the landlord did not conduct a move in condition inspection or complete a move in Condition Inspection Report.

### Analysis

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants.

As per the landlord's testimony, she did not conduct a move in condition inspection or complete a move in Condition Inspection Report at the start of the tenancy. As such, I find the landlord has extinguished her right to claim against the security deposit.

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.

In addition, as the landlord acknowledges receipt of the tenants' forwarding address no later than March 31, 2013 I find that she had until April 15, 2013 to either return the full security deposit to the tenants or file an Application for Dispute Resolution seeking to claim against the deposit. From the landlord's testimony, I find that she failed to do either and has therefore failed to comply with Section 38(1) and the tenants are entitled to return of double the security deposit pursuant to 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 **\$1,348.00** comprised of \$2,000.00 double the security deposit and the \$50.00 fee paid by the tenants for this application less the \$702.00 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 23, 2013

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Residential Tenancy Branch

