



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

During the hearing the tenant reduced her claim to exclude the matter of NSF fees and as such, I amend the tenant's Application to include only the matter of the return of the security deposit and her filing fee.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled; to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords 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 landlords submitted into evidence a copy of a tenancy agreement signed by the parties on September 18, 2012 for a 6 month and 12 day fixed term tenancy beginning on September 18, 2012 for a monthly rent of \$650.00 due on the 1<sup>st</sup> of each month with a security deposit of \$325.00 paid and a pet damage deposit of \$100.00 paid.

The tenant submits that she vacated the rental unit on February 27, 2013 and that she went back to clean the rental unit on February 28, 2013. The landlords submit that despite the tenant indicating that she might be moving out at the end of February 2013 they never did receive a notice in writing as they had requested confirming the tenant's intent to end the tenancy. They submit they were informed by way of an email from their agent on March 3, 2013 that the tenant vacated the rental unit.

The tenant submits that she provided her forwarding address to the landlords in January 2013 and again on March 20, 2013 by registered mail. The landlords have submitted a

copy of a typewritten letter from the tenant dated March 22, 2013 with her forwarding address.

During the hearing the tenant agreed the landlord could retain \$151.20 from the deposit for carpet cleaning.

### 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, in writing, either return the security and pet damage deposits 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 and pet damage deposits.

Section 44 of the *Act* stipulates that a tenancy ends if one or more of the following apply:

- a) The tenant gives notice in accordance with Section 45 of the *Act*;
- b) The landlord gives notice in accordance with any one of Sections 46, 47, 48, 49, 49.1 or 50;
- c) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- d) The landlord and tenant agree in writing;
- e) The tenant vacates or abandons the rental unit;
- f) The tenancy agreement is frustrated; or
- g) The director orders that the tenancy is ended.

While there is dispute among the parties as to whether or not the tenant gave adequate notice to end the tenancy, I find the issue is not relevant to issues before me today and I make no determinations on that issue.

Regardless of whether or not the tenant gave adequate notice I find the tenancy ended when the tenant vacated the rental unit by February 28, 2013, pursuant to Section 44. I, however, note that this does not preclude the landlords from claiming any losses they believe they may be entitled to if the tenant did give a short notice to end the tenancy.

As the tenant has provided no evidence that she served the landlord with her forwarding address in January 2013 and both parties acknowledge that she did provide it in writing in a letter dated March 22, 2013, I find the landlords had received the forwarding address, allowing for delivery, no later than March 27, 2013.

As such, and pursuant to Section 38, the landlords had until April 11, 2013 to either return the deposit in full or file an Application for Dispute Resolution with the Residential Tenancy Branch seeking to claim against the deposit. As the landlords have not filed any Applications seeking to claim against the deposit I find the landlords have failed to

comply with Section 38(1) and the tenant is entitled to double the amount of the deposits in accordance with Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$748.80** comprised of \$650.00 double the security deposit; \$200.00 double the pet damage deposit; and the \$50.00 fee paid by the tenant for this application; less \$151.20 for carpet cleaning.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant 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: September 30, 2013

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Residential Tenancy Branch

