



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 the tenant.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 22, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

The tenant submits that she did receive the hearing documents back from Canada Post marked as unclaimed. I find the act of not accepting or claiming registered mailed can be considered a deliberate attempt to avoid service.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security and pet damage deposits 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 *Act*.

### Background and Evidence

The tenant testified the tenancy began in February 2005 as a 1 year fixed term tenancy that converted to a month to month tenancy effective February 1, 2006 for a monthly rent of \$1,375.00 due on the 1<sup>st</sup> of each month with a security deposit of \$650.00 and a pet damage deposit of \$650.00 paid.

The tenant submits that the tenancy ended by June 30, 2013 because the landlord issued the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant submits they met with the landlord on July 1, 2013 at the rental unit at which time the tenant provided the landlord with their forwarding address in writing.

The tenant testified the landlord threw the address on the ground and said she would not return the deposits because the tenant did not paint the rental unit.

### 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 and pet deposit 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 and pet damage deposit.

Based on the undisputed testimony of the tenant, I find the landlord received the tenant's forwarding address on July 1, 2013 and as such had until July 16, 2013 to either return both deposits or file an Application for Dispute Resolution seeking to claim against the deposits.

I also accept the tenant's testimony that she has not received the deposits back. I find there is no record that the landlord has submitted an Application for Dispute Resolution seeking to claim against the deposit.

Therefore, I find the landlord has failed to comply with Section 38(1) in regard to both the pet damage deposit and the security deposit and the tenants are entitled to return of double the deposits in accordance with 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 **\$2,696.00** comprised of \$2,600.00 double the deposits; \$46.00 interest calculated on the original amounts of the deposits and the \$50.00 fee paid by the tenants for this application.

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: October 25, 2013

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Residential Tenancy Branch

