



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for the return of double their security deposit and pet damage deposit, and to recover their filing fee.

The tenants and an agent for the landlord, AT, (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties, the parties provided affirmed testimony and presented documentary evidence.

The landlord testified that he received and reviewed the tenants' evidence. The USB drive submitted in evidence was excluded from the hearing as the digital evidence was not submitted in accordance with the rules of procedure. I have reviewed all testimony and other evidence. However, in this Decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue to be Decided

- Are the tenants entitled to the return of double their security deposit and pet damage deposit under the *Act*?

### Background and Evidence

The parties agreed that a fixed term tenancy began on February 1, 2012 and reverted to a month to month tenancy after February 1, 2013. Monthly rent in the amount of \$850.00 was due on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$300.00, for a total of \$725.00 in combined deposits, were paid by the tenants at the start of the tenancy.

The parties agreed that the tenants vacated the rental unit as of June 29, 2013. The tenants provided their written forwarding address to the landlord on May 23, 2013 which the agent confirmed that the landlord received from the tenants in May of 2013. The parties agreed that the tenants received \$625.00 of the \$725.00 in combined deposits in an envelope post-marked by the landlord on "13/07/16", which is July 16, 2013. The landlord did not file an application claiming towards either of the tenants' deposits. The agent confirmed during the hearing that the landlord did not have written permission from the tenants to keep any portion of their deposits.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenants' claim for the return of double their security deposit and pet damage deposit** – I accept that the tenancy ended on June 29, 2013 as this was not disputed during the hearing. Section 38 of the *Act* applies which states:

### **Return of security deposit and pet damage deposit**

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

**(a) the date the tenancy ends, and**

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

**the landlord must do one of the following:**

**(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;**

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

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

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

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

**[emphasis added]**

In the matter before me, **I find** that the landlord did not repay the tenants' security deposit or pet damage deposit (the "deposits") or make an application for dispute resolution claiming against the deposits within 15 days of the end of tenancy date which was June 29, 2013. In the matter before me, the end of tenancy date, June 29, 2013 is later than the May 23, 2013 date when the tenants provided their written forwarding address to the landlord. The landlord post-marked a payment dated July 16, 2013 which is more than 15 days after the end of tenancy, and the landlord did not return the full amount of the deposits by withholding \$100.00 of the tenants' deposits without the written permission of the tenants.

Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit and pet damage deposits to the tenants within 15 days of June 29, 2013, the date the tenancy ended, having not made a claim towards the deposits and without written permission to retain the \$100.00 withheld by the landlord. Therefore, **I find** the tenants are entitled to the return of double their original combined deposits of \$725.00, comprised of \$425.00 security deposit and \$300.00 pet damage deposit, for a total of **\$1,450.00**, less the \$625.00 paid to the tenants by the landlord which was post-marked on July 16, 2013. I note that the deposits have accrued \$0.00 in interest since the start of the tenancy.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of \$50.00.

**Monetary Order** – I find that the tenants have established a monetary claim in the amount of **\$875.00**, comprised of the \$1,450.00 in the security deposit and pet damage deposit which have been doubled under the *Act*, plus the \$50.00 filing fee, less a credit of \$625.00 which was paid to the tenants late by the landlord. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$875.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants' application had merit. The tenants have been granted a monetary order under section 67 in the amount of \$875.00. This order must be served on the landlord, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 6, 2013

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Residential Tenancy Branch

