



# 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 by way of conference call in response to the tenants' application for a Monetary Order to recover the security deposit and the filing fee from the landlord for the cost of this application.

The tenants, the tenants' agent and the landlord attended the conference call hearing and gave sworn testimony. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to recover the security deposit?

### Background and Evidence

The tenants have provided a copy of the tenancy agreement in documentary evidence. This agreement confirms that the tenancy started on May 01, 2013 for a monthly rent of \$895.00 which was due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$450.00 on May 01, 2013.

The tenants' agent testifies that the landlord did not return the tenants' security deposit to the tenants within 15 days. The landlord provided a security deposit statement in which the landlord had deducted the security deposit for carpet cleaning, cleaning and

rent arrears. The tenants' agent testifies that the tenants had left the unit clean and had given notice to end the tenancy.

The tenants' agent testifies that at the start of the tenancy the landlord did not complete a move in condition inspection report with the tenants but just did a walkthrough of the unit with them. The tenants testify that they gave the landlord a forwarding address when they moved out and have not given the landlord written permission to keep all or part of the security deposit.

The landlord disputes the tenants' claims. The landlord agrees he did not complete a move in report with the tenants. The landlord testifies that the tenants had not cleaned the carpets or the unit and there are rent arrears due to an inadequate notice period. The landlord testifies that the security deposit was kept to cover these items.

### Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4) of the *Act* require a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenants even if the tenants refuse to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved in, I find the landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished a landlord is not entitled to file a claim to keep the security deposit for damages and must return the security deposit to the tenants.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing at the end of the tenancy. As a result, the landlord should have returned the tenants' security deposit within 15 days. As the landlord failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$900.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenants are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

#### Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$950.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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: February 04, 2014

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Residential Tenancy Branch

