



# 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 tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant, her advocate and the landlord.

While the tenants' original Application for Dispute Resolution was for the return of the double the amount of the security deposit in the amount of \$800.00 they later submitted an amended Application indicating their claim was for an amount of \$2,450.00 but provided no explanation as to what the additional \$1,650.00 was.

The tenant clarified at the outset of the hearing that she amended their application to seek compensation for the landlord's failure to use the rental property for the stated purpose when he ended the tenancy for landlord's use.

As the tenants failed to provide any written explanation when they submitted the amendment to their Application I decline their amendment as they had not provided the landlord with any information that would have allowed him to prepare for this issue. I note the tenants remain at liberty to file a new and separate Application for Dispute Resolution seeking such compensation.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of double the amount 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 agree the tenancy was a month to month tenancy for a monthly rent of \$800.00 due in two installments of \$400.00 each month paid every two weeks with a security deposit paid.

The landlord submitted that the tenancy was in place when he purchased the rental property on November 1, 2011 and he was unsure as to the start date of the tenancy. The tenant submitted the tenancy began on October 1, 2010. The parties agree the tenancy ended on August 31, 2013.

The tenant submitted that she provided the landlord with her forwarding address in writing by registered mail on September 11, 2013 but that the registered mailed was returned to her as unclaimed. The tenant also submitted that her previous advocate had mailed a letter through regular post to the landlord on November 1, 2013 that provided the tenant's forwarding address.

The landlord submits that he did not receive any notification of registered mail in September 2013 and did not receive a letter from the tenants' advocate. He states that he has not had any problems with his mail delivery but he never received anything from the tenant until he received the notice of hearing documents in late November or early December 2013.

### 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 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.

While I normally would consider that registered mail that is returned to a party as unclaimed would constitute a deliberate attempt to avoid service, in the case before me it does confirm that the landlord had not received the tenants' forwarding address in September 2013.

In addition, as the letter from the tenants' advocate was mailed through regular mail and not as registered mail, there is no way to track whether the letter was ever sent to the landlord. As the landlord disputes receiving such a letter I am not satisfied that he received it.

However, as the landlord acknowledges that he had received the tenants' forwarding address when he received their Application for Dispute Resolution I find that from the date of receiving the Application the landlord had 15 days to comply with the requirements set out in Section 38(1).

While the landlord cannot recall the specific date that he received the tenants' Application I will allow that he did not receive the Application until December 15, 2013. As such, the landlord had until December 30, 2013 to either return the deposit in full or to file an Application for Dispute Resolution seeking to claim the deposit for any damage or losses he feels he may have suffered as a result of the tenancy.

As the landlord had not, as of the date of this hearing, filed an Application for Dispute Resolution seeking to claim against the deposit, I find the landlord failed to comply with Section 38(1) and the tenants are entitled to return of double the amount of the deposit pursuant to Section 38(6).

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$850.00** comprised of \$800.00 double the security deposit 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 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: March 17, 2014

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Residential Tenancy Branch

