



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MEICOR REALTY PROPERTY MANAGEMENT SERVICES  
and [tenant name suppressed to protect privacy]

## **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 a monetary order for the return of double their security deposit under the *Act*, and to recover their filing fee.

The tenants, two witnesses for the tenants, an agent of the landlord (the "agent") and a witness for the landlord, appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The parties confirmed that they received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

### Issues to be Decided

- What should happen to the tenants' security deposit under the *Act*?
- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on June 1, 2013. Monthly rent in the amount of \$575.00 was due on the first day of each month. A security deposit of \$287.50 was paid by the tenants at the start of the tenancy.

The parties disputed the end of tenancy date. The tenants stated that although they moved out of the rental unit on September 30, 2013, they returned on October 31, 2013 to clean the rental unit. The agent disputed the tenants' testimony by stating that the tenants vacated the rental unit on September 30, 2013.

There was no dispute that the tenants provided their written forwarding address to the landlord in writing in a document dated September 12, 2013. The agent stated that the address on the tenants' application for dispute resolution was different than the address provided by the tenants as their forwarding address on the September 12, 2013 document. The agent confirmed that the landlord did not attempt to return the tenants' security deposit to the address provided by the tenants in writing in the September 12, 2013 document from the tenants.

The parties disputed whether the tenants contacted the agent for the landlord to arrange an outgoing condition inspection report. There was no dispute; however, that the landlord did not arrange for an outgoing condition inspection report with the tenants. The agent confirmed that an outgoing condition inspection report was not completed.

The parties agreed that the tenants did not sign over any portion of the tenants' security deposit and the landlord did not submit an application claiming towards the tenants' security deposit.

Witness testimony provided by the tenants' witnesses was disputed by the agent and related primarily to what day the tenants cleaned the rental unit.

### Analysis

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

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The agent confirmed that the landlord continues to hold the tenants' security deposit. 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]**

Regardless of whether I accept the tenants' version of when the tenancy ended, October 31, 2013, or the landlord's version of when the tenancy ended, September 30, 2013, the landlord has not returned the tenants' security deposit and continues to hold the security deposit.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenants. In the matter before me, I find the landlord received the written forwarding address from the tenants in writing on September 12, 2013. The landlord did not file an application for

dispute resolution claiming towards the tenants' security deposit and the landlord did not have any authority under the *Act* to keep any portion of the security deposit as the tenants did not authorize the landlord to retain any portion of their security deposit. The agent confirmed that the landlord did not attempt to return the tenants' security deposit to the forwarding address provided by the tenants in the September 12, 2013 document.

Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit in full or submitting an application claiming towards the tenants' security deposit within 15 days of receiving the forwarding address of the tenants in writing on September 12, 2013. Whether the end of tenancy date was September 30, 2013 or October 31, 2013, the landlord failed to return the full security deposit or file an application for dispute resolution claiming towards the tenants' security deposit within 15 days of the later of the two dates, which in the matter before me was October 31, 2013, as the written forwarding address was provided on September 12, 2013.

Therefore, as the landlord has breached section 38 of the *Act*, **I find** the tenants are entitled to the return of double their original security deposit of \$287.50, which as accrued no interest since the start of the tenancy, for a total of **\$575.00**

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

**I find** that the tenants have established a total monetary claim of **\$625.00** comprised of \$575.00 for double their original security deposit, plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$625.00**. 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.

Regarding the agents testimony claiming that the tenants did not contact the landlord to schedule an outgoing condition inspection report, the landlord is **cautioned** to comply with section 35 of the *Act* in the future. Section 35(2) of the *Act* states that the landlord must offer the tenants at least 2 opportunities, as prescribed, for the inspection.

### Conclusion

The tenants' claim had merit. The landlord has breached section 38 of the *Act*.

The tenants have been granted a monetary order under section 67 in the amount of \$625.00. 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: March 14, 2014

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Residential Tenancy Branch

