



# 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 tenant's application for a Monetary Order to recover double the security and pet deposit and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenant to the landlords, was done in accordance with section 89 of the *Act*; served by registered mail to both landlords on May 06, 2014. Canada Post tracking numbers were provided by the tenant's agents in sworn testimony. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant's parents attended the hearing on behalf of the tenant and had permission from the tenant to act as the tenant's agents. The tenant's agents gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover double the security and pet deposits?

### Background and Evidence

The tenant's agent BVS testified that this tenancy started on August 01, 2013 for a fixed term tenancy which was due to end on April 30, 2014. The tenant gave written Notice and ended the tenancy on March 30, 2014. Rent for this unit was \$1,050.00 per month due on the first of each month. The tenant paid a security deposit of \$525.00 on August 01, 2013 and a pet deposit of \$262.50 on August 15, 2013.

The tenant's agent testified that the landlords did not do a move out condition report with the tenant on the day the tenant vacated the unit. Instead the tenant had to return on April 03, 2014 after the new tenants had moved into the unit. At that time a walk through inspection was carried out with the landlords and tenant but no written report was completed. The tenant's agent testified that the landlords did not complete a move in condition inspection report at the start of the tenancy either.

The tenant's agent testified that the tenant gave the landlords her forwarding address in writing and a copy of that letter dated April 05, 2014 has been provided in evidence. The tenant's agent testified that he contacted the female landlord a few days later and that landlord confirmed receipt of the tenant's letter. The tenant's agent testified that the tenant did not give the landlords written or verbal permission to keep all or part of her security or pet deposit. The tenant seeks to recover double the security and pet deposit to a sum of \$1,575.00. The tenant also seeks to recover the \$50.00 filing fee from the landlords.

### 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 and pet 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 and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlords contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlords' right to claim against the security or pet deposit for damages is extinguished.

When a landlords' right to claim against the security and pet deposit has been extinguished the landlords are not entitled to file a claim to keep the security or pet deposit for damages to the unit, site or property; If the deposits have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gave the landlords their forwarding address in writing the landlords must pay double the security deposit to the tenants.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenant's forwarding address in writing on April 05, 2014. As a result, the landlords had until April 20, 2014 to return the tenant's security and pet deposit. As the landlords failed to do so, the tenant has established a claim for the return of double the security and pet deposit to an amount of **\$1,575.00**, 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 tenant is also entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,625.00**. The Order must be served on the Respondents 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: August 07, 2014

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Residential Tenancy Branch

