



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNSD

### Introduction

This is an application by the tenant for a monetary order for return of double the security deposit.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April 8, 2014, Canada posts tracking number were provided as evidence of service.

The tenant stated that the Canada post track history indicated that the landlords received the packages on April 11, 2014. The landlords did not appear.

I find that the landlords have been duly served in accordance with the Act.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenant paid a security deposit of \$400.00 on July 3, 2010. The tenant vacated the premises on April 20, 2012. The tenant stated that on April 18, 2012 and April 20, 2012, he provided the landlords with written notice of his forwarding address, by personal service, which was witnessed. Filed in evidence are copies of the letters, which support the tenant's claim.

The tenant stated he has not received his security deposit from the landlord and he did not authorize the landlords to retain any portion of the security deposit. The tenant stated the landlords did not make an application for dispute resolution claiming against the deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlords are in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlords could retain any portion of the security deposit.

There was also no evidence to show that the landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlords are not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act that the landlords pay the tenant the sum of \$800.00, comprised of double security deposit (\$400.00) on the original amounts held.

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and 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: July 30, 2014

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Residential Tenancy Branch

