



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both of the tenants, their advocate, and the landlord.

The tenants noted at the start of the hearing that they had not received any evidence from the landlord. The landlord confirmed that while he did submit a letter and other evidence to the Residential Tenancy Branch he did not serve any evidence to the tenants.

The landlord stated he did not know he was supposed to serve the tenants with anything and he did not know where he was suppose to send it if he had known. I advised the landlord that tenants address had been provided on their Application for Dispute Resolution.

Further, I pointed out the landlord that the Notice of Hearing Document that he used to obtain the phone number and access code for the hearing listed a number of points of general information including the first point that stated that evidence must be provided to both the other party and to the Residential Tenancy Branch.

I advised the parties that I would not be considering the landlord's documentary evidence but that the landlord was free to provide any testimony he wanted that related to his documents and written submissions.

The landlord indicated that he wanted a review of the proceedings because he was not receiving a fair hearing. I advised the landlord he could not yet seek a Review Consideration on the proceeding because the hearing had not yet begun, nor had a decision been written. I also noted that he could not use the fact that he did not do what he was suppose to do in regards to serving evidence as a ground for review.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on November 16, 2013 as a month to month tenancy for a monthly rent of \$860.00 due on the 1<sup>st</sup> of each month with a security deposit of \$430.00 paid. The parties also agreed the tenancy ended on January 31, 2014.

The tenants submit they provided the landlord with their forwarding address by way of registered mail on February 14, 2014 using an incorrect address for the landlord and it was returned.

The tenants submit they later sent a new letter by registered mail on March 12, 2014 with their forwarding address. The tenants provided Canada Post tracking information showing that the landlord receive this letter on April 24, 2014. The landlord agreed that he received their forwarding address at about this time.

The landlord confirmed that he did not return the deposit to the tenants nor did he file an Application for Dispute Resolution to claim against the deposit for any damage to the property or for any other liabilities.

### Analysis

While the landlord provided testimony regarding damages he alleges were caused by the tenants, I advised the parties that this Application was submitted by the tenants and dealt solely with the disposition of the security deposit and not with whether or not the tenants caused any damage to the rental unit or residential property. If those issues were to be adjudicated they would be done so based on an Application for Dispute Resolution submitted by the landlord if the landlord so chose to make such an Application.

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.

As the tenancy ended on January 31, 2014 and the landlord confirmed that he received the tenant's forwarding address by April 24, 2014, I find the landlord had until May 9, 2014 to either return the deposit or file an Application for Dispute Resolution to claim against the deposit to be compliant with Section 38(1).

As per the landlord's testimony, I accept that the landlord has not returned the deposit or filed an Application for Dispute Resolution to claim against the deposits and as such I find the landlord has failed to comply with Section 38(1).

As a result, I find the tenants are entitled to double the amount of the security deposit paid pursuant to Section 38(6).

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$860.00** comprised of double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: August 22, 2014

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Residential Tenancy Branch

