



# 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 scheduled to deal with cross applications. The tenants applied for return of double the security deposit. The landlords applied for monetary compensation for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

During the allotted hearing time I heard the tenant's request for double the security deposit and had determined the landlords had lost the right to claim against the deposit pursuant to section 38(6) of the Act. Although I proceeded to hear the landlord's claim for damages and loss, due to time constraints, the landlords' application was not fully heard. As the tenants were seeking return of the deposit and the landlord's lost the right to claim against it, I severed the Applications and the remainder of this decision and the Monetary Order that accompanies it pertains to the tenant's Application for Dispute Resolution only. The landlords' application was adjourned and a separate decision, and Monetary Order as applicable, shall be issued upon conclusion of the landlords' Application.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for return of double the security deposit?

### Background and Evidence

The tenancy commenced December 5, 2013 for a fixed term set to expire May 31, 2014 at which time the tenants were required to vacate the rental unit. The tenants paid a security deposit of \$500.00. A move-in inspection report was prepared by the landlord and signed by both parties.

On May 31, 2014 the landlord met with the female tenant and a friend at the rental unit. The parties conducted a brief inspection of the unit; however, a move-out inspection report was not completed while both parties were together. The female tenant testified that she did not see a move-out inspection report in the landlord's possession and one was not presented to her. The landlord explained that the move-out inspection report was not done at that time because of a very hostile disagreement between the parties while they were at the unit on May 31, 2014 and then the tenant left. The tenant denied that there was a hostile disagreement.

I heard the landlord remained at the unit after the tenant and friend left but he did not complete the move-out inspection report at that time either. Rather, the landlord testified that he completed the move-out inspection report in June 2014. The move-out inspection report was sent to the tenant with the landlord's evidence package on August 23, 2014.

The tenants submitted that they sent their forwarding address to the landlords via regular mail on June 17, 2014. The tenants stated that no response was received from the landlords. The landlord denied receiving a forwarding address by regular mail.

The landlord testified that the first time he obtained the tenants' forwarding address was upon receipt of their Application for Dispute Resolution on July 15, 2014. The landlord testified that a letter was sent to the tenants via regular mail on July 16, 2014 but he did not receive a response from them. The tenants denied receiving the landlords' letter dated July 16, 2014 until they received the landlords' evidence package for this proceeding on August 28, 2014.

The landlords attempted to file an Application for Dispute Resolution to seek compensation from the tenants and authorization to retain the security deposit on August 18, 2014. Due to errors on the Application it was accepted by the Branch on August 21, 2013.

With respect to authorizing deductions, the tenants stated that they did not authorize the landlord to make deductions from the deposit. The landlord was in agreement that the tenants did not authorize deductions from the deposit but also pointed to the move-out inspection report as showing the male tenant's signature in the space provided for authorization deductions from the security deposit. The amount of the authorized deduction is reflected as a question mark on the report. However, all of the parties were in agreement that the male tenant was not present at the move-out inspection. The parties acknowledged that it was likely that the male tenant signed in that space during the move-in inspection.

### Analysis

Section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. The two exceptions to section 38(1) are where a tenant has

extinguished the right to return of the security deposit or the landlord has obtained the legal right to retain the security deposit.

A legal right to make deductions from a security deposit may be accomplished where a landlord has obtained the tenant's written consent to do so or that of the Director, as delegated to an Arbitrator. Although the male tenant's signature appears in the space provided for authorizing deductions from a deposit at the end of the tenancy, there is no amount indicated. Without an amount being specified the landlord has not obtained the authorization to make a deduction. Furthermore, the Act precludes a landlord from making terms that provide for an automatic deduction from the security deposit; therefore, a signature provided by the tenant at the time of the move-in inspection was likely an error but in any event is not enforceable.

The Act provides that a tenant extinguishes the right to return of the security deposit if the tenant does not participate in an inspection at the beginning or end of the tenancy despite the landlord making two offers to the tenant. Although the female tenant was present for the move-out inspection, the landlord implied that the tenant left the unit after before the move-out inspection report was prepared. The tenant stated that a move-out inspection report was not observed or presented to her at the move-out inspection. I find it likely that the landlord did not prepare or present the move-out inspection report at the time of the inspection as the condition of each room was not recorded on the report he submitted as evidence. Furthermore, the landlord testified that completed the report that was presented to me as evidence in June 2014 upon determining his losses. Therefore, I am satisfied the female tenant met her obligation to participate in the move-out inspection and there was no extinguishment by the tenants.

Although the landlord denied receiving the tenants' forwarding address by way of a letter sent on June 17, 2014, it was undeniable that the landlords received the tenants' forwarding address in writing on July 15, 2014 by way of their Application for Dispute Resolution. Accordingly, I find the landlords had until July 30, 2014 to do one of the following so as to not violate section 38(1) of the Act: return the security deposit to the tenants; obtain the tenant's written authorization to retain it; or file an Application for Dispute Resolution. The landlords did not refund the security deposit, did not obtain the tenants' written authorization for deductions; and, did not attempt to file an Application for Dispute Resolution until August 18, 2014. Therefore, I find the landlords failed to comply with section 38(1) of the Act and section 38(6) applies.

Section 38(6) provides:

- (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.

Pursuant to section 38(6), I find the landlords lost the right to claim against the security deposit and must now pay the tenants double the security deposit. I further award the tenants recovery of the filing fee. Therefore, I provide the tenants with a Monetary Order in the total amount of \$1,050.00.

#### Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,050.00 for return of double the security deposit and recovery of the filing fee.

The landlords lost the right to claim against the deposit and their claim for compensation for damages and loss against the tenants shall be dealt with separately.

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: November 06, 2014

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Residential Tenancy Branch

