



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, RPP

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord return personal possessions and a monetary order.

The hearing was conducted via teleconference and was attended by one of the tenants; the landlord and his agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord to return personal possessions; to a monetary order for return of double the security deposit, for compensation, pursuant to Sections 38, 62, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began as a 1 year fixed term tenancy in March 2013 for the monthly rent of \$1,100.00 due on the 5<sup>th</sup> of each month and that a security deposit of \$550.00 was paid. The parties also agree the tenancy ended when the tenants vacated the rental unit by June 16, 2014 pursuant to an order of possession dated June 4, 2014.

The tenant submits that they provided the landlord with their forwarding address in writing by delivering it to him personally at his address on June 21, 2014. The landlord testified first that he had not received the tenant's forwarding address until the tenant's served him with their Application for Dispute Resolution; then later when reviewing the handwritten letter the tenants submitted into evidence he stated that he could not remember if he received that letter or not.

The landlord confirmed in his testimony that he had instructed his agent two or three weeks prior to this hearing to submit an Application for Dispute Resolution to the Residential Tenancy Branch against the tenants for damage to the rental unit. The landlord and his agent could not confirm during the hearing if such an Application had been made.

The tenant also submits that when they were moving out the landlord's agent had agreed to allow them to have everything moved out by 4:00 p.m. on June 16, 2014. However, they had not moved everything out by that time and when they returned at 5:00 p.m. the locks were changed and they could not enter to retrieve the remainder of their belongings. The tenant submits that after this she could not reach the landlord.

The tenants did not provide a list of items missing prior to the hearing or any evidence to establish the value of the items. The tenant stated that the missing items included CD's belonging to a local library that she is being charged a \$1.00 per day fee for not returning them; a microwave; and an entertainment cabinet. The tenant testified she could not remember anything else. The tenants seek return of these items and compensation for them in the amount of \$1,400.00.

The landlord testified that the tenant had indicated that some of the items left behind outside belonged to her roommate and the items inside were hers but when she never returned to big them up or contacted him to arrange a pick up and dispose of anything left behind.

### Analysis

Section 38(1) of the *Act* states that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit. Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit

From the testimony of both parties I find the tenancy ended on June 16, 2014. While the tenant states she provided the landlord her forwarding address on June 21, 2014 the landlord states he cannot remember. As the landlord cannot remember and the tenant has provided a copy of the letter dated June 21, 2014 I prefer the tenants' evidence and find the landlord received the tenants' forwarding address on June 21, 2014. As such, I find the landlord was required to return the deposit or file a claim against the deposit no later than July 6, 2014.

Even if I were to not accept the landlord received the address on June 21, 2014 the landlord did agree that he did received the tenants' forwarding address when he received the tenants' Application for Dispute Resolution. As he would have received the tenants' Application in July 2014, using the latest possible date of July 31, 2014 that landlord would have had until August 15, 2014 to either return the deposit or file an Application to claim against it.

From the landlord's testimony, even if his agent has now applied to claim against the deposit, that Application could not have been made any earlier than 2 or 3 weeks prior to this hearing or sometime in November or December 2014. As a result, I find the

landlord has failed to comply with Section 38(1) of the Act and the tenants are entitled to double the amount of the deposit pursuant to Section 38(6).

As to the tenants' claim for compensation for failure of the landlord to return personal property, I find the tenants have failed to provide sufficient evidence of any items of value being held by the landlord and even if the landlord has retained certain items the tenants have failed to provide any evidence to establish the value of \$1,400.00 as claimed. As such, I dismiss the tenants' claim for compensation and an order requiring the landlord to return any personal possessions.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,100.00** comprised of double the amount of the security deposit held.

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: December 18, 2014

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Residential Tenancy Branch

