



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?  
Is the tenant entitled to the return of the security deposit?

### Background, Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenants must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenancy began on April 1, 2012 and ended on November 30, 2014. The tenants were obligated to pay \$1550.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$725.00 security deposit. The tenants stated that they had received \$250.00 of the deposit from the landlord. Both parties agree that condition inspection reports at move in or move out were not conducted.

I address the tenants' claims and my findings around each as follows:

**First Claim** – The tenants stated that they are seeking a \$650.00 overpayment of rent. The tenants stated that the landlord cashed two cheques for the same amount that they were not entitled to. The tenants stated that the screen shot copy that they have submitted clearly shows that.

The landlord disputes this claim. The landlord stated that they have cashed only one cheque that they were entitled to. The landlord stated that the tenants have not provided any evidence of a second payment.

The screen shot sent in by the tenants is eligible and offers assistance. In addition, the tenants stated that they are seeking \$650.00 however they later agreed that the alleged duplicate payment was for \$620.00. The tenants have not satisfied me of this claim. Based on the inconsistent testimony of the tenants and the insufficient evidence before me I must dismiss this portion of the tenants claim.

**Second Claim-** The tenants are seeking the remaining portion of the security deposit of \$500.00 be returned to them. The tenants stated that the landlord did not have the right to retain the deposit. The tenants stated that they verbally gave their forwarding address to the other landlord.

The landlord stated that she disputes this claim. The landlord stated that the tenants left the unit dirty. The landlord stated that she did not receive the tenants forwarding address but her partner did. The landlord stated that these parties have been involved in a previous hearing whereby the Arbitrator dismissed the application without leave to reapply.

After reading that decision it's clear that the Arbitrators decision stated that NJ was the only tenant legally permitted to pursue the security deposit and that the other two parties had no standing. The landlord confirmed that she has not filed an application to retain the security deposit or an order from the Branch to retain it or the agreement of tenant to retain it.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

And Section 38 (6) says 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**

As the landlord has not returned the deposit or filed an application for dispute resolution, I find that the tenant is entitled to the return of double the security deposit  $\$750.00 \times 2 = \$1500.00$  minus the  $\$250.00$  previously returned for an award of  $\$1250.00$ .

The tenant is also entitled to the recovery of the  $\$50.00$  filing fee.

### Conclusion

The tenant has established a claim for  $\$1300.00$ . I grant the tenant an order under section 67 for the balance due of  $\$1300.00$ . This order may be filed in the Small Claims 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: January 12, 2015

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Residential Tenancy Branch

