



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the tenant.

The tenant testified each landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on August 26, 2014 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed. Tracking information provided confirms the landlord received the registered mail on September 9, 2014. Based on the testimony of the tenants, I find that each landlord has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on July 9, 2013 for a 1 year fixed term tenancy beginning on August 1, 2013 for a monthly rent of \$1,750.00 due on the 1<sup>st</sup> of each month with a security deposit of \$875.00 paid. The tenant confirmed the tenancy ended on July 31, 2014.

The tenant testified she provided the landlord with her forwarding address on August 7, 2015 by email and the tenant received a cheque from the landlord on August 20, 2015 in the amount of \$706.05.

The tenant submitted into evidence a document, entitled Security Deposit Refund Form that she received from the landlord with the cheque in the amount of \$706.05. The document stipulates that the landlord acknowledged a security deposit of \$875.00 plus

a reimbursement to the tenant for expenses of \$45.05 less carpet cleaning in the amount of \$114.00 and cleaning and repairs in the amount of \$100.00.

### Analysis

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 in full 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.

From the tenant's undisputed testimony I find that the landlord received the tenants' forwarding address on August 7, 2015. As such, I find the landlord had until August 22, 2015 to either return the deposit in full or file an Application for Dispute Resolution to claim against the deposit.

As there is no evidence before me that the landlords filed an Application for Dispute Resolution by August 22, 2014 I find the landlords have failed to comply with the requirements under Section 38(1) to return the tenants' full security deposit. Therefore, I find the tenants are entitled to double the amount of the security deposit less the amount they have already received. I calculate the amount as follows:  $\$875.00 \times 2 = \$1,750.00$  amount owed less \$661.00 already returned for total of \$1,089.00.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,139.00** comprised of \$1,089.00 security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail 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: March 19, 2015

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Residential Tenancy Branch

