



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application by the Tenants for a Monetary Order for return of double the security deposit paid to the Landlord and compensation for damage or loss under the Act, Regulation or tenancy agreement.

Only the Tenants appeared at the hearing. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 25, 2014, and deemed received under the Act five days later. The Tenants' documentary evidence indicates the registered mail was refused by the Landlord. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlord has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenants to double the security deposit paid?
2. Are the Tenants entitled to monetary compensation for damage or loss under the Act, Regulation or tenancy agreement?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. K.U. testified on behalf of the Tenants and stated that the tenancy was for a fixed six month term beginning on January 1, 2014 and ending on September 1, 2014.

The Tenants paid the Landlord a security deposit of \$375.00 on or about December 31, 2013. Introduced in evidence was a copy of the receipt for the security deposit paid. The Tenants also paid the Landlord the sum of \$75.00 as a deposit for the rental units' garage door opener; this receipt was also submitted in evidence.

The Tenants vacated the premises on August 31, 2014.

K.U. testified that the Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by hand delivering it to the Landlord on or about August 31, 2014 when the Tenants returned the rental unit keys and garage door opener. The Tenants did not sign over a portion of the security deposit.

K.U. testified that the Landlord performed an incoming condition inspection report but did not provide the Tenants with a copy as required by section 23(5) of the *Act*. The Tenants further testified that the Landlord did not attend at the rental unit for the outgoing condition inspection report.

The Tenants sought return of double the security deposit pursuant to section 38(6)(b) of the *Act*. The Tenants also sought return of the \$75.00 deposit they paid for the rental unit garage door opener.

K.U. testified that the refrigerator in the rental unit stopped working for two months. The Landlord was out of the country at the time and sent a repair person to fix the refrigerator; K.U. testified that this repair person failed to show up on the two scheduled times to perform the repairs. K.U. testified that as a result of the inoperable refrigerator, that she was forced to store food outside the rental unit on the balcony. She sought the sum of \$60.00 which she testified was a conservative estimate of the amount of food she lost as a result of the inoperable refrigerator.

Introduced in evidence were emails between the Tenant and the Landlord dated March 2014, wherein the Tenant requested the sum of \$60.00 as compensation for wasted food as a result of the inoperable refrigerator. In response the Landlord wrote: "I will sort out the wasted food problem when I get back". K.U. testified that despite this assurance, the Landlord did not provide compensation or "sort out" the issue of the wasted food.

### Analysis

Based on the above, K.U.'s testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$750.00** , comprised of double the security deposit (2 x \$375.00 ).

I accept K.U.'s undisputed evidence that the Landlord failed to return the \$75.00 deposit for the rental unit garage door opener. I also accept K.U.'s testimony that she returned

the garage door opener to the Landlord on August 31, 2014. I order, pursuant to section 67 that the Landlord return the **\$75.00** deposit to the Tenants.

Pursuant to *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises*, a Landlord is responsible for repairs to appliances provided under the tenancy agreement. Section 3(b) of the tenancy agreement submitted in evidence by the Tenant indicates that a refrigerator was included in the rent.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept K.U.'s undisputed evidence that she suffered a loss of \$60.00 in wasted food when the refrigerator became inoperable. I find that the Landlord failed to repair the refrigerator as required by the tenancy agreement and the *Policy Guidelines*. I also find that the Tenant attempted to minimize the loss by placing the food items on the balcony. I find that she has met the burden of proving her loss and award her the sum of **\$60.00**.

In sum, I award the Tenants monetary compensation in the amount of **\$885.00** pursuant to section 67 of the *Act* for the following:

Return of double the security deposit paid by the Tenants (2 x \$375.00 ).	\$750.00
Return of the \$75.00 deposit paid for the garage door opener	\$75.00
Compensation for loss of food as a result of the inoperable refrigerator	\$60.00
<b>TOTAL</b>	<b>\$885.00</b>

### Conclusion

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 23, 2015

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Residential Tenancy Branch

