



# 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 convened by way of conference call in response to the tenants' application for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlord attended the conference call hearing and gave sworn testimony. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. The landlord sent some evidence in but this was only sent four days prior to the hearing and is considered to be late under s.3.15 of the Rules of Procedure. I have not therefore considered this evidence. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

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

### Background and Evidence

The parties agreed that this month to month tenancy started on December 28, 2010. Rent for this unit was \$1,600.00 per month due on the first of each month. The tenants paid a security deposit of \$800.00 on December 28, 2010. The parties also agreed that the landlord did not

complete a move in condition inspection report at the start of the tenancy. The tenants provided a forwarding address in writing on June 28, 2014.

The tenants testified that they actually vacated the rental unit on July 26, 2014 although the tenancy ran until July 31, 2014. Written notice was given to end the tenancy as required. The tenants did not give the landlord permission to keep all or part of the security deposit. The tenants testified that the landlord has not returned the security deposit within the required 15 days and therefore the tenants seek to recover double the security deposit of \$1,600.00.

The tenants also seek to recover their filing fee of \$50.00.

The landlord disputed the tenants' claim. The landlord testified that the unit was brand new at the start of the tenancy. The tenants used something on the stainless steel microwave that has damaged the control panel. This panel had to be replaced by the landlord. The landlord agreed she did not return the security deposit to the tenants.

### Analysis

I refer the parties to section 38(1) of the *Act* that says a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Further to this; section 23 of the *Act* require a landlord to complete a condition inspection report at the start of a tenancy and to provide a copy of it to the tenants even if the tenants refuse to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection when the tenants moved in, I find the landlord contravened section 23 of the *Act*. Consequently, section 24(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenants within 15 days of either the end of the tenancy or the date the tenants give the landlord their forwarding address in writing whichever is the later date.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on June 28, 2014. As a result, the landlord had until July 13, 2014 to return all of the tenants' security deposit. As the landlord failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$1,600.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

#### Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 38(6)(b) and 72(1) of the *Act* in the amount of **\$1,650.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: May 05, 2015

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Residential Tenancy Branch

