



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      DRI, CNR, MNDC, MNSD, OPT, FF

### Introduction

This hearing dealt with an application by the tenant seeking to dispute an additional rent increase, an order to have a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities set aside, a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, seeking the return of the security deposit, to obtain an order of possession and to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Preliminary Issues

At the outset of the hearing the tenants advised that they had moved out and the only issue that needed to be addressed was the security deposit. The landlords concurred with that position. Based on the information provided to me and the agreement of both parties, I hereby dismiss all items relating to the tenants application save and except the issue of the security deposit.

### Issue to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

### Background, Evidence

The tenants' testimony is as follows. The tenancy began on May 24, 1997 and ended on June 30, 2015. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit. The tenant stated that they provided their forwarding address on April 30, 2015.

The landlords' testimony is as follows. The landlord stated that the tenants left the unit dirty, without notice and rent still outstanding. The landlord stated that they believed today's hearing would address all of those issues along with the security deposit.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

As per section 38 of the *Act*, the landlord was required to either return the security deposit in full or file an application within 15 days. However, the tenants applied for a return of their security deposit while still living in the rental unit. I find that the tenants were premature in their application. I find that it is reasonable that the landlord assumed that the security deposit would be dealt with at this hearing; therefore, they likely did not return the security deposit or make an application to retain it, prior to this hearing, for this reason.

Accordingly, the landlord is put on notice that she is deemed to have received the tenant's written forwarding address five (5) days after the date of this decision (by July 13, 2015). The landlord then has 15 days after deemed receipt (until July 28, 2015) to either return the tenant's security deposit in full or to file an application for dispute resolution. If the landlord does not complete the above actions, the tenant may apply for the return of double the amount of his security deposit in accordance with section 38 of the *Act*.

### Conclusion

The tenant's application for the return the security deposit is dismissed with leave to reapply.

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: July 07, 2015

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Residential Tenancy Branch

