



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”) and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

### Issues to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The tenancy began on June 1, 2014. Rent in the amount of \$1,400.00 was payable on the first of each month. A Deposit of \$700.00 was paid by the tenants on June 8, 2014.

The tenant testified that they vacated the premises on November 15, 2014. The tenant stated that they provided the landlord with a written notice of the forwarding address on November 18, 2014, by placing the letter in the landlord’s mailbox, which they photographed. The tenants stated that they did not authorize the landlord to retain any amount from the Deposit, although they were discussions on hydro and oil; however, the amount they calculated of \$306.79 was not agreed upon by the landlord.

The landlord acknowledged that they received the tenants’ forwarding address on November 22, 2014. The landlord stated that they were attempting to negotiate with the

tenants additional cost for damages, which those discussions were not successful. The landlord confirmed that they did not return the Deposit and they did not file an application for dispute resolution within 15 days.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **Return of security deposit and pet damage deposit**

38 (1) 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.

...

(6) 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 deposit, pet damage deposit, or both, as applicable.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on November 18, 2014 and received by the landlord on November 22, 2014. Although the parties were negotiating an amount for damages, no agreement was reached. The landlord did not return any portion of the Deposit within 15 days.

I find the landlord has breached 38(1) of the Act.

The Deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the Deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the Deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenants the sum of **\$1,450.00**, comprised of double the Deposit (\$700.00) on the original amounts held and to recover the \$50.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, 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.

### Conclusion

The tenants' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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 29, 2015

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Residential Tenancy Branch

