



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TERMINAL HEIGHTS APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit less an authorized deduction. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord had provided late documentary evidence to the Branch in the days preceding the hearing. The landlords acknowledged that it had not been served upon the tenants. The parties were informed that I would permit the landlords to refer to their documentary evidence orally during the hearing and if necessary and appropriate I would consider ordering service of the landlord's evidence upon the tenant. As it turned out the facts of this case were not in dispute and it was unnecessary to consider any orders with respect to service of evidence.

### Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit in the amount claimed?

### Background and Evidence

The tenancy commenced February 1, 2013 and ended on November 28, 2014 when the tenants returned vacant possession of the rental unit to the landlord and a move-out inspection was completed. The tenants had paid a security deposit of \$487.50 at the start of their tenancy and were required to pay rent on the 1<sup>st</sup> day of every month. The tenants provided their forwarding address to the landlord on the move-out inspection report. The tenants authorized the landlord to make a deduction of \$82.95 from the security deposit for carpet cleaning on the move-out inspection report.

The landlord sent a refund cheque to the tenants in the net amount of \$404.55 which was received and cashed in late January 2015. The landlord submitted that the refund cheque was issued on January 14, 2015.

The landlord acknowledged the refund was sent to the tenants outside of the 15 days after the tenancy ended and suggested that it was due an administrative error.

The tenant did not waive entitlement to doubling of the security deposit.

### Analysis

Unless a landlord has a legal right to retain all or part of the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

It was undisputed that the tenants had provided the landlord with a forwarding address in writing on November 28, 2014 when the move-out inspection report was completed; the tenants authorized the landlord, in writing, to make a deduction of \$82.95 from the \$487.50 security deposit on November 28, 2015; and the tenants expected a refund of the balance of the security deposit of \$404.55 within 15 days of the tenancy ending.

Whether the tenancy ended on November 28, 2014 or November 30, 2014 was not analyzed as it is of no consequence since It was undisputed that the refund of \$404.55 was mailed to the tenants more than 15 days after the tenancy ended, whichever date that was.

In recognition of the authorized deduction of \$82.95, I find the landlords had the legal right to retain \$82.95 of the security deposit and the landlords violated the Act with respect to refunding the tenants \$404.55 within 15 days of the tenancy ending. Accordingly, I double \$404.55 and award the tenants \$809.10. I further award the tenants recovery of the \$50.00 filing fee paid for their Application.

In light of the above, and taking into account the tenants subsequently received a refund cheque of \$404.55 from the landlord in late January 2015 which they cashed, I provide the tenants with a Monetary Order calculated as follows:

Double security deposit not returned within 15 days	\$809.10
Filing fee	50.00
Less: refund received after 15 days	<u>(404.55)</u>
Monetary Order for tenants	\$454.55

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The tenants have been provided a Monetary Order in the amount of \$454.55 to serve and enforce as necessary.

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 30, 2015

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Residential Tenancy Branch

