



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MND, MNDS & MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenants by mailing, by registered mail to where the tenants reside on March 13, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a 6 month written tenancy agreement that provided that the tenancy would start on November 1, 2014, end on April 30, 2015 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of

\$1125 plus \$25 parking per month payable on the first day of each month. The tenants paid a security deposit of \$562.50 prior to the start of the tenancy. The tenancy ended on February 28, 2015.

Monetary Order and Cost of Filing fee

The landlord testified the tenants ended the tenancy two month prior to the end of the fixed term and seeks liquidated damages in the sum of \$562.50. The tenants testified they vacated early because of the illegal drug use in the property. They further testified the representative of the landlord who went through the Condition Inspection at the end of the tenancy told them the tenants left the rental unit in a better condition than what existed when they took possession. The tenants also submit the provision in the tenancy agreement dealing with liquidated damages was left blank and therefore the tenancy agreement does not provide for the payment of liquidated damages.

After carefully considering all of the evidence I determined the landlord has failed to establish a monetary claim for liquidated damage. The tenancy agreement does not provide for the payment of liquidated damage. The Security Deposit Refund document provided by the landlord's head office purports to provide that the tenant has agreed to liquidated damages. The document relied on by the participants in the hearing provided that the parties had agreed to the refund of the security deposit and there is no mention of a claim for liquidated damages. I determined the landlord's head office has altered this form and that the tenant did not agree the landlord could keep the security deposit.

As a result I dismissed the landlord's claim for a monetary order and to retain the security deposit. Section 38 of the Residential Tenancy Act provides that where an arbitrator has dismissed a landlord's claim to keep the security deposit, the arbitrator must order that the security deposit be returned to the tenants. **As a result I ordered that the landlord pay to the tenants the sum of \$562.50.**

It is further Ordered that this sum be paid forthwith. The respondent is given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the applicant 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 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: August 17, 2015

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Residential Tenancy Branch

