



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlords and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

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

### Issue to be Decided

Has there been a breach of Section 38 of the Act by the Landlords entitling the Tenants to return of double the security deposit paid and recovery of the filing fee?

### Background and Evidence

The tenancy began October 1, 2013 with the Tenant, A.S. A.S. paid the Landlords a security deposit of \$400.00 and a pet damage deposit of \$75.00 on or before September 20, 2013 (the "Deposit"). A written tenancy agreement was entered into by the parties on May 1, 2014 when C.S. moved into the rental unit with A.S. which specifically acknowledged the Deposit paid by the Tenants. The Tenants vacated the premises on December 31, 2014.

The Tenants provided the Landlords with written notice of the forwarding address to return the Deposit to, by providing that information to the Landlords on the move out condition inspection report. Also introduced in evidence was a copy of text communication between the parties which also confirmed the Landlords received the Tenants forwarding address on or about January 21, 2015. The Landlord acknowledged during the hearing that she received their forwarding address. The Tenants did not sign over a portion of the Deposit and requested its return.

The Tenants testified that the Landlords did not perform an incoming condition inspection report. They further testified that although an outgoing condition inspection report had been performed, the Landlords refused to provide the Tenants with a copy.

The Landlords claimed the Tenants had left the rental unit unclean or damaged and submitted photographic evidence of the condition of the rental unit.

The Tenants sought the sum of \$950.00 representing double the Deposit paid as well as \$50.00 for recovery of the filing fee.

At the end of the Tenants testimony the Landlord confirmed they took no issue with the Tenants application and were prepared to pay the \$950.00 requested by the Tenants.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act. There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit. Further, during her testimony the Landlord, L.M., confirmed that she had not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the Deposit, as required under section 38.

By failing to perform incoming condition inspection report in accordance with the *Act*, the Landlords extinguished their right to claim against the security deposit for damages, pursuant to section 24(2) of the *Act*.

Security deposits and pet damage deposits are held in trust for the Tenants by the Landlords. If the Landlords and the Tenants are unable to agree to the repayment of the deposits or to deductions to be made to these funds, the Landlords *must* file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the Landlords feel they are entitled to keep the deposit, based on unproven claims.

The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an Order from an Arbitrator, or with the written agreement of the Tenants. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit. Therefore, I find that the Landlords are in breach of the *Act* and not entitled to retain any portion of the security deposit.

I note that the Landlords submitted evidence about the condition of the rental unit after the Tenant left; however, the Landlords are unable to make a monetary claim through the Tenants' Application. The Landlords have to file their own Application to keep the Deposit with the 15

days of certain events, as explained above. The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the Deposit has now been conclusively dealt with in this hearing.

Although during her testimony the Landlord confirmed she took no issue with the Tenants claim, she did not return the Deposit and consequently the Tenants incurred the cost of filing their application. As the Tenants were successful in their application they are entitled to recover the fee paid to file their application.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,000.00**, comprised of double the security deposit (2 x \$475.00) and the \$50.00 fee for filing this Application.

Although no application was made compelling the Landlords to comply, the Landlords are reminded of their obligations pursuant to section 35(4) of the Act as well as the Regulations to provide the Tenants with a copy of the move out condition inspection report.

#### Conclusion

The Tenants are entitled to return of double the security deposit in addition to recovery of the filing fee.

The Tenants are given a formal Monetary Order in the above terms and the Landlords must be served with a copy of this Monetary Order as soon as possible. Should the Landlords fail to comply with this Order, the Tenants may file this Order in the Small Claims division of the Provincial Court and it may be enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 10, 2015

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Residential Tenancy Branch

