



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for monetary order for the return of double their security deposit pursuant to section 38 of the *Act*, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the recovery of the cost of the filing fee.

The tenants attended the teleconference hearing and gave affirmed testimony. The tenants were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. Tenant L.H. affirmed that she served the landlord with Notice of the Hearing, Application and documentary evidence via registered mail on June 25, 2015 and provided a registered mail tracking number in evidence. Tenant L.H. stated that the registered mail package was addressed to the landlord at the service address confirmed via email dated April 27, 2015. A copy of that email was submitted in evidence. I note that the landlord failed to provide her service address on the tenancy agreement and accept that the service address for the landlord was the address provided by email from the landlord. Tenant L.H. testified that the registered mail package was returned to her as "unclaimed", a copy of which was submitted in evidence.

Documents served by registered mail are deemed served five days after they are mailed pursuant to section 90 of the *Act*. Therefore, I find the landlord was served on June 30, 2015 in accordance with the *Act*. I note that refusal or neglect on the part of the landlord to pick up registered mail does not constitute grounds for a Review Consideration.

### Preliminary and Procedural Matters

During the hearing, tenant L.H. confirmed that joint tenant A.C. had also applied for dispute resolution and had also claimed for the return of double the security deposit. Tenant A.C. was brought into the hearing, affirmed, and testified that she would prefer to have both applications joined as a result, as the tenants were not aware that as joint tenants they could not claim for the return of one security deposit under the *Act* via two separate applications. As a result, and in accordance with section 64(3) of the *Act*, I amend this application to include tenant A.C. and have cancelled the other application filed by tenant A.C., the file number of which has been included on the front page of this decision for ease of reference. I note that the other hearing, originally scheduled for December 17, 2015, will no longer be necessary and is cancelled in its' entirety by the request of tenant A.C.

### Issues to be Decided

- Did the landlord breach section 38 of the *Act* resulting in double the amount of the security deposit being owed to the tenants?
- Are the tenants entitled to a monetary order pursuant to section 67 of the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on January 1, 2014, although an obvious error in year was listed on the tenancy agreement which read, 2015. The tenants confirmed that the year should have read 2014. A security deposit of \$550 was paid by the tenants at the start of the tenancy. The tenants confirmed that tenant L.H. vacated the rental unit as of May 15, 2015, while tenant A.C. vacated the rental unit on May 31, 2015. The tenants testified that their written forwarding address was provided on April 30, 2015 by email, and that the landlord replied to that email. In addition, the tenants testified that they provided their written forwarding address to the landlord in the landlord's mailbox on June 1, 2015. On June 15, 2015, the tenants stated that the landlord mailed them a cheque in the amount of \$360. The tenants testified that they did not cash the cheque from the landlord as they did not authorize any deductions from their \$550 security deposit, and the landlord has not filed a claim towards their security deposit.

The tenants are seeking the return of double their \$550 security deposit, in the amount of \$1,100, plus the recovery of their \$50 filing fee.

### Analysis

Based on the undisputed documentary evidence and testimony provided by the tenants, and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

In reaching this finding, I have considered the tenants' undisputed testimony that the tenants did not agree to sign over any portion of their security deposit to the landlord. There was also no evidence to show that the landlord has applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

I accept that the tenants provided their written forwarding address both by email, to which they received a response from the landlord, and in the mailbox of the landlord. In the interests of fairness, I will use the latter of the two dates provided by the tenants, June 1, 2015, in which the tenants provided their written forwarding address in the mailbox of the landlord. I find that by issuing a cheque in the amount of \$360 to the tenants, that the landlord had obviously received the tenants' written forwarding address. I also accept that the tenants did not authorize the landlord to retain any portion of their \$550 security deposit in writing, and did not cash the cheque from the landlord in the amount of \$360.

A security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security 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 security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the full \$550 security deposit to the tenants within 15 days of June 4, 2015, which is three days after June 1, 2015. Section 90 of the *Act* states that documents served on the door are deemed served 3 days later, which I find that serving in the mailbox of the landlord to be equivalent to under the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Given the above, **I ORDER**, pursuant to section 38 and 67 of the *Act*, the landlord to pay the tenants double their original \$550 security deposit for a total of **\$1,100**. The landlord should have returned the tenants' full security deposit of \$550 within 15 days of June 4, 2015, or have filed an

application claiming towards the tenants' security deposit, which the landlord failed to do.

As the tenants' application had merit, I grant the tenants the recovery of the cost of filing their application in the amount of **\$50**.

Pursuant to section 67 of the *Act*, I find the tenants have established a total monetary claim of **\$1,150**, comprised of \$1,100 for the return of double their security deposit, plus the recovery of cost of the \$50 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,150** as a result. I note that the tenants have not cashed the cheque in the amount of \$360 from the landlord which is likely now stale-dated.

### Conclusion

The tenants' application is successful.

The landlord has breached section 38 of the *Act* and must pay double the security deposit plus the \$50 filing fee, for a total of \$1,150. The tenants have been granted a monetary order in the amount of \$1,150. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: October 26, 2015

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Residential Tenancy Branch

