



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover the security and pet deposit, for an Order for the landlords to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants and landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence.

*Procedural Matter* - At the outset of the hearing, the matter of the landlords' evidence was discussed. The landlords' evidence was submitted five days prior to the hearing. Rule 3.15 of the Residential Tenancy Rules of Procedure says that, the landlords as the respondents must submit their evidence seven days prior to the hearing to the applicants and the Residential Tenancy Branch. In considering whether to accept the landlords' evidence, I find that the landlords delayed in sending this evidence; I have therefore excluded the landlords' evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure and based my decision on this.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security and pet deposit?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agreed that this tenancy started on June 01, 2013 or an initial fixed term of one year; thereafter the tenancy continued on a month to month basis. Rent for this unit was \$1,400.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$700.00 and a pet deposit of \$200.00 at the start of the tenancy.

The tenants testified that as they did not vacate the rental unit until April 02, 2015 they agreed in writing that the landlord could retain \$100.00 from the security deposit to cover rent for two days. This left an amount of the security deposit held in trust by the landlords to be \$600.00 and a \$200.00 pet deposit.

The tenants testified that they gave the landlord their forwarding address in writing on March 01, 2015. The landlord did not return the security or pet deposit within the allowable 15 days after the tenancy ended and they have not filed an application to keep either of the deposits. The tenants now seek to recover double the security and pet deposit and do not waive their right to the doubling provision under s. 38 of the *Act*.

The tenants seek an Order for the landlords to comply with the *Act* with regard to the return of their security and pet deposits and seek to recover their filing fee of \$50.00.

The landlords agreed that they did receive the tenants' forwarding address in writing on March 01, 2015. The landlords agreed the tenants provided written permission for the landlords to retain \$100.00 of the security deposit only.

The landlords testified that they did not return the security and pet deposit as they were waiting for some final bills to come in regarding damage to the rental unit. The landlords testified that they were not aware they had to file an application to keep the security or pet deposit within 15 days of the end of the tenancy. The landlords testified that the tenants did attend the move out inspection but were in a hurry to leave and did not discuss the landlords' concerns about the repairs required.

### Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants' forwarding address in writing to either return the security and pet deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenants' forwarding address in writing on March 01, 2015 and the tenancy ended on April 02, 2015. As a result, the landlords had until April 17, 2015 to return the balance of the tenants' security deposit less the amount of \$100.00 agreed upon in writing and return the pet deposit, or file a claim to keep the deposits. As the landlords failed to do so, the tenants have established a claim for the return of the balance of the security deposit and the pet deposit. Even though the tenants had not applied to recover double the security and pet deposits I am required under s. 38(6)(b) of the *Act* to double these deposits. Consequently, the tenants have been awarded a Monetary Order for the amount of **\$1,600.00**. There has been no accrued interest on the security or pet deposit for the term of the tenancy.

As the tenants' claim has merit, the tenants are also entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' revised monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,650.00**. The Order must be served on the landlords. If the landlords fail to comply with the Order, the Order is enforceable through the Provincial Court 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: November 03, 2015

---

Residential Tenancy Branch

