



# 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 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 a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant 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 issues* -In considering Rule 3.15, the respondent, the landlord in this case, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 7 days prior to the hearing, and in this case, the landlord sent evidence to the RTB just within the time frame allowed; however, as the landlord sent the tenants' evidence package by registered mail it was only received the day before the hearing. In considering whether to accept the landlord's evidence, I find that the landlord delayed in sending his evidence. I also find a great deal of the landlord's evidence pertains to damages, cleaning and a loss of rent and is not relevant for this hearing as it is the tenants' application. I have therefore excluded the landlord's evidence not relevant for consideration in this matter.

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure.

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 a Monetary Order for double the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2013 for a fixed term period of a year. A new tenancy agreement was entered into on July 01, 2014 for another fixed term ending on June 30, 2015. The tenancy ended on April 01, 2015. Rent for this unit was \$1,365.00 per month. Rent was due on the first day of each month in advance. The tenants paid a security deposit of \$675.00 and a pet deposit of \$675.00 on July 01, 2013.

The tenants testified that the landlord failed to return the security deposit within 15 days of receiving the tenants' forwarding address in writing. The tenants testified that the forwarding address was provided to the landlord's agent and placed in his mailbox on April 10, 2015 with a witness. The tenants testified that the landlord was not given written permission to keep all or part of the security deposit.

The tenants agreed the landlord's agent sent an email transfer for the amount of \$348.00 on April 19, 2015 but the tenants did not accept this as it was not the full amount of the security and pet deposit. As the landlord as not returned the security and pet deposit in full the tenants seek to recover double the security and pet deposit from the landlord.

The landlord agreed the tenants did not provide written permission for the landlord to keep all or part of the security or pet deposit. The landlord testified that the tenants gave notice to end tenancy and breached the terms of their tenancy agreement by ending the tenancy before the end of the fixed term. The landlord testified that the unit was not re-rented until April 15, 2015 and therefore the landlord suffered a loss of rent for 14 days. The landlord testified that a portion of the security and pet deposit was kept to cover the rent, repairs and cleaning required in the unit. The landlord testified that he sent an email transfer to his property manager who then sent an email transfer for \$348.00 to the tenants within the 15 days but the tenants declined to accept it. The landlord testified that according to his property manager he did not receive a full address for the tenants.

The tenants' witness testified that she was present when the tenants delivered a letter to the landlord's agent's home in April, 2015. The witness testified that she had sight of this letter and it contained a request for the landlord to return their security and pet deposit and she recalls that it also provided a forwarding address for the tenants. The witness testified that this letter was put in the landlord's agent mailbox.

The landlord declined to cross examine the tenants' witness.

The parties declined to cross examine the other party.

### 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 tenant's forwarding address in writing to either return the security and pet deposit in full to the tenant 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 tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Therefore, based on the above and the evidence presented I am satisfied that the landlord's agent did receive the tenant's forwarding address in writing on April 13, 2015. As it was placed in the mailbox on April 10, 2015 it is deemed served three days later pursuant to s. 90(d) of the *Act*. As a result, the landlord had until April 28, 2015 to return all of the tenant's security and pet deposit or file a claim to keep it. As the landlord failed to do so, the tenants have established a claim for the return of double the security and pet deposit to an amount of **\$2,700.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security or pet deposit for the term of the tenancy.

The tenants are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

#### Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,750.00**. The Order must be served on the Respondent. If the Respondent fails 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 04, 2015

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Residential Tenancy Branch

