



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

DRI, MNSD

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The two tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 41 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenants' Application.

The tenants initially filed their Application seeking to recover a monetary award of \$425.00. However, in the "details of the dispute" of their Application, they indicated that they wished to seek \$50.00 per month for an illegal rent increase. The landlord testified that she was aware that the tenants were seeking double the value of their security deposit as well as an additional rent increase at this hearing. Therefore, pursuant to section 64(3)(c) of the Act, I amend the tenants' Application to increase their monetary order from \$425.00, the amount of the original security deposit, to \$1,000.00, the amount for double the value of the deposit plus \$150.00 for the illegal rent increase amount. I find no prejudice to the landlord in amending the tenants' Application, as the landlord had notice of the tenants' claims to be made at this hearing.

### Issues to be Decided

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on March 15, 2013 and ended on May 4, 2015. A written tenancy agreement was provided for this hearing. Both parties agreed that a security deposit of \$425.00 was paid by the tenants. Both parties agreed that move-in and move-out condition inspection reports were not completed for this tenancy.

Both parties agreed that monthly rent in the amount of \$850.00 was payable on the first day of each month, as per the tenancy agreement. However, the landlord stated that she increased the rent by \$50.00 each month beginning in February 2015. She stated that she did not issue a legal notice of rent increase to the tenants to raise their rent. She indicated that she increased the rent because the tenants brought in a larger pet than originally agreed, her property taxes were high, and her original rental advertisement for this unit listed \$900.00 for rent each month. The landlord agreed that she collected rent of \$900.00 for each of February, March and April 2015 from the tenants. The tenants provided copies of their cashed cheques for the above months.

The tenants confirmed that they provided a written forwarding address to the landlord verbally while moving out, by way of a text message on May 5, 2015, and by way of a letter, dated June 1, 2015, sent by registered mail. During the hearing, the tenants verbally provided a Canada Post tracking number for the letter that they mailed to the landlord on June 1, 2015, and confirmed that the tracking information indicated that it was successfully delivered on June 4, 2015. The tenants stated that the landlord did not formally provide them with her service address, as no address was indicated on the tenancy agreement. The tenants stated that they mailed the letter to the landlord's employment address, which is the landlord's own business, the same address that they used to mail their Application to the landlord and the landlord received their Application. The landlord denied that she received any written forwarding address from the tenants. The tenants provided a copy of this letter with their Application.

The landlord confirmed that the tenants did not provide written permission to her to retain any amount from their security deposit. The landlord confirmed that no application for dispute resolution was filed by her to retain any amount from the tenants' security deposit.

### Analysis

#### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end

of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenants seek the return of double the value of their security deposit, totalling \$850.00, from the landlord. The tenancy ended on May 4, 2015. The tenants provided their written forwarding address to the landlord by way of a letter that was sent by registered mail on June 1, 2015. The tenants provided a Canada Post tracking number during the hearing to confirm service. Therefore, I find that the landlord was deemed served with the tenants' written forwarding address, in accordance with sections 88 and 90 of the *Act*, on June 6, 2015, five days after its registered mailing.

The landlord received the tenants' Application at her employment address. The landlord did not provide another service address to the tenants. Therefore, in accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served for the purposes of the *Act* with the tenants written forwarding address at her employment address.

The tenants did not give the landlord written permission to retain any amount from their deposit. The landlord did not return the deposit to the tenants or make an application for dispute resolution to claim against this deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to double the value of their security deposit, totalling \$850.00.

### Rent Increase

The tenants dispute the landlord's additional rent increase of \$50.00 for each month from February to April 2015, totalling \$150.00. The landlord did not issue a legal notice of rent increase in the approved form, as required by section 42(3) of the *Act*. Accordingly, the landlord's attempted rent increase is illegal.

I find that the rent from February to April 2015 was to remain at \$850.00 per month and that the tenants overpaid rent of \$50.00 for these months, totalling \$150.00. The tenants provided documentary proof of cheques cashed by the landlord for these months and the landlord agreed that she received these payments from the tenants. I find that the tenants are entitled to a monetary award of \$150.00 to recover this rent overpayment.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,000.00 against the landlord under the following terms:

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> ( $\$425.00 \times 2 = \$850.00$ )	\$850.00
Rent Overpayment due to Illegal Rent Increase	150.00
<b>Total Monetary Order</b>	<b>\$1,000.00</b>

The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: November 30, 2015

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Residential Tenancy Branch

