



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding H & L Condo Services Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order for the return of their security deposit. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the tenants entitled to an order for the return of their security deposit?

### Background and Evidence

The parties agreed that the tenancy began on April 30, 2015 and ended on August 31, 2015. They further agreed that the tenants paid a \$850.00 security deposit at the outset of the tenancy and that in mid to late August, the tenant PT provided her forwarding address to the landlord via email. They further agreed that on September 16, the landlord attempted to e-transfer \$66.34 and that she retained the remainder of the deposit without the tenants' written permission, save \$95.00 which the tenants agreed that she could retain. The tenants did not accept the e-transfer.

The landlord claimed that although she received PT's address via email, she did not return the deposit to her because of the one authorized deduction and cleaning charges to which she believed she was entitled. The landlord testified that she did not perform a condition inspection of the unit together with the tenants at the beginning of the tenancy, but inspected the unit herself prior to the time they took possession of the unit. The landlord claimed that she did not send funds to PT because in mid-May, PT sent her a letter advising that she was moving out of the unit and the landlord therefore believed that PT was a guarantor rather than a tenant.

### Analysis

While the landlord may have believed that PT was a guarantor, the parties agreed that PT's name was on the tenancy agreement as a tenant. PT therefore remained jointly and severally liable with her co-tenants regardless of whether she actually occupied the unit and I therefore find that PT was a tenant and that the landlord received the tenants' forwarding address prior to the date they all vacated the rental unit.

Section 23(1) of the Act requires landlords and tenants to inspect the rental unit together at the beginning of the tenancy and section 24(2) provides that if a landlord does not comply with section 23(1), the landlord's right to claim against the security deposit is extinguished. I find that the landlord extinguished her right to claim against the security deposit at the outset of the tenancy when she failed to arrange to inspect the unit together with the tenants.

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenants' forwarding address in writing, the landlord must either return the deposit in full to the tenants or file an application for dispute resolution to make a claim against the deposit.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenants double the security deposit. Although the tenants did not make a claim for double the deposit, Residential Tenancy Policy Guideline #17 provides that unless the tenant has specifically waived the doubling of the deposit, the arbitrator will award double the deposit if the landlord has failed to file a claim against it within the prescribed timeframe as outlined above.

I find that the tenants paid an \$850.00 security deposit and vacated the rental unit on August 31, 2015 and that the landlord received the forwarding address in writing prior to August 31. I find that the tenants authorized the landlord to retain \$95.00 of the security deposit. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenants double the remaining \$755.00 of the security deposit. I therefore award the tenants \$1,510.00. As the tenants have been successful in their claim, I find they should recover the \$50.00 filing fee paid to bring their application and I award this sum for a total award of \$1,560.00. I grant the tenants a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that the landlord believes that she incurred costs as a result of the tenants' alleged failure to adequately clean unit. The landlord is free to file a claim against the tenants for a monetary order.

Conclusion

The tenants are granted a monetary order for \$1,560.00 which represents the filing fee plus double the \$755.00 security deposit which remained after the landlord retained \$95.00 with the tenants' permission.

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: December 07, 2015

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Residential Tenancy Branch

