



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord.

Although the Tenant submitted that he claimed recovery of the filing fee on his application, this was not claimed on the application provided to me, nor was it on the Landlord's application.

Both parties appeared at the hearing. The Tenant, E.K. appeared on his own behalf and as agent for the tenant J.R. The Landlord V.P. attended on her own behalf and as agent for the Landlord, D.P. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Preliminary Matter

The Tenant confirmed that he provided 16 pages of evidence to the Branch in July of 2015 and to the Landlord. Those pages were not available to me at the time of the hearing. The Tenant testified that he submitted the following:

1. Pages 1-6 the Residential Tenancy Agreement;
2. Pages 7 and 8 are copies of the cheques for the security deposit (dated January 6, 2014) and some post-dated cheques;
3. Page 9 is a copy of the second request asking for the security deposit dated March 2015;
4. Page 10 is a copy of the cheque in the amount of \$125.25 that was sent to the Tenants from the Landlords dated November 6, 2014;

5. Page 11 was a letter from the Landlords titled "Intention to Retain Security Deposit" dated December 1, 2014;
6. Page 12 is a copy of an invoice from the Landlord's, V.P., to the premises for time to show the premises, travel time, in relation to prospective tenants in the approximate amount of \$700.00;
7. Page 13 is another invoice from a third party for some carpet cleaning;
8. Page 14 is credit card receipt for payment of the carpet cleaning;
9. Page 15 is an invoice from A.H. (the Landlords' company) to the address for some painting;
10. Page 16 is an invoice from V.P. to the address for picking up and disposing of garbage.

The Landlord confirmed that the above list of evidence provided by the Tenant to the Branch had been received by her, save and except for the cheque dated November 6, 2015 for \$125.25 noted in the above list as document #4.

At the conclusion of the hearing I directed the Tenant to resubmit his 16 pages of evidence for my consideration. Both parties were informed that they were not to provide any further evidence and in the event they did it would not be considered.

On December 22, 2015 the Tenants resubmitted their evidence to the Residential Tenancy Branch. On January 5, 2016 that evidence was provided to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

#### Issues to be Decided

Has there been a breach of Section 38 of the *Act* by the Landlord entitling the Tenants to return of double the security deposit paid?

#### Background and Evidence

The Tenant testified that the tenancy began February 1, 2014; monthly rent was payable in the amount of \$2,950.00; and the Tenants paid the Landlord a security deposit of \$1,475.00 on or about January 6, 2014. The Tenants vacated the premises on September 30, 2014.

The Tenant testified that the rental unit was re-rented as of October 1, 2014. The Landlord testified that the new renters moved in on October 3, or 4, 2014 as it took a few days to clean and paint the rental.

The Tenant testified that he provided the Landlords with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlords at the address on the tenancy agreement on or about November 17, 2014 by registered mail. He was not able to provide the tracking number for this mailing.

The Tenant testified that they then sent a second letter to the Landlord with their forwarding address on March 23, 2015 also by registered mail. The Tenant provided a copy of the tracking number in evidence which confirmed the package was returned undeliverable.

The Tenants did not sign over a portion of the security deposit to the Landlords.

The Tenants testified that the Landlords did not perform an incoming or outgoing condition inspection report.

The Tenant testified that the Landlords sent two letters to the Tenants as follows:

- A letter dated November 6, 2014 which included a cheque for \$125.25; and,
- A letter dated December 1, 2014 which included a cheque for \$124.99.

The Tenant testified that the Landlord did not have an Order authorizing them to make the above deductions. The Tenant further testified that neither of the cheques were cashed by the Tenants as they did not agree to the Landlords' deductions.

The Landlord confirmed the start date of the tenancy as well as the monthly rent amount and amount of the security deposit. She stated this was a one year fixed term tenancy agreement and that the Tenant broke the lease by ending the tenancy early.

She also confirmed that she did not complete a move in or move out condition inspection report.

The Landlord testified that she sent a letter on November 6, 2014 including a cheque for \$125.25. She confirmed that she sent the letter to the address provided by the Tenants.

The Landlord further testified that she received a letter in response from the Tenants on November 17, 2015.

The Landlord confirmed that she did not make an application for dispute resolution.

The Landlord further stated that her husband received a text message from the Tenant, J.R. wherein she wrote: "would you like us to sublet or you keep damage deposit?" That text message was not in evidence.

The Landlord claimed that she believed only the Tenant was allowed to submit evidence. Despite being directed to the Notice of Dispute Resolution Hearing letter which she received, and the clear instructions on the document with respect to the parties' responsibilities at the hearing, the Landlord insisted she was told that only the applicant could submit evidence. She then stated that she believed the dispute resolution hearing would occur in "real time" and that she would be able to email her evidence during the hearing.

The Landlord testified that in response to the Tenant, J.R.'s, text message the Landlords asked the Tenants to sublet the rental.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the *Act*.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit. While the text message apparently sent by the Tenant J.R. was not in evidence, based on the information provided by the Landlord I find that at best the Tenants made an offer for the Landlord to either retain the security deposit, or allow the Tenants to attempt to sublet the rental. The Landlord confirmed that in response the Landlords asked the Tenants to attempt to sublet. In choosing this option, it appears as though the Tenants' suggestion that the Landlords retain the security deposit was not accepted by the Landlords. In any case, the parties confirm that the rental unit was re-rented immediately following the end of the tenancy.

There was also no evidence to show that the Landlord had 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, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act.

The 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. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

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 with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Landlord submitted evidence about the condition of the rental unit after the Tenant left; however, the Landlord is unable to make a monetary claim through the Tenants' Application. The Landlord has to file their own Application to keep the deposit within the 15 days of certain events, as explained above.

The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$2,950.00**, comprised of double the security deposit (2 x \$1,475.00).

### Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$2,950.00** and must serve the Landlord with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as 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: January 18, 2015

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Residential Tenancy Branch

