



# 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 conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on August 5, 2015 for the return of their security deposit and pet damage deposits (the “deposits”) and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”). The Tenants also applied to recover the filing fee from the Landlords.

One of the Tenants appeared for the hearing and provided affirmed testimony as well as evidence prior to the hearing. However, there was no appearance for the Landlords during the 30 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenants. The Tenant testified that they served each Landlord with a copy of the Application and the Notice of Hearing documents to the service address on the tenancy agreement. This was done by registered mail on August 5, 2015. The Landlord provided the Canada Post tracking numbers into evidence to verify this method of service. The Landlord testified that the Canada Post website showed that the documents have been received and signed for by the Landlords.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find the Landlords were served pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Tenant. At the end of the hearing, the Tenant decided to withdraw his monetary claim for compensation from the Landlords to reconsider it. As a result, I provided the Tenants leave to re-apply.

### Issue(s) to be Decided

Are the Tenants entitled to the return of their deposits?

### Background and Evidence

The Tenant testified that this tenancy started on March 1, 2013 for a fixed term of two years which ended on February 28, 2015 and continued on a month to month basis thereafter. The Tenancy ended on June 30, 2015 after the Tenants provided the Landlords with written notice to end the tenancy. Rent in the amount of \$2,700.00 was payable on the first day of each month. The Tenants paid the Landlords a security deposit of \$1,350.00 on February 12, 2013 and a pet damage deposit of \$1,350.00 in November 2014, a total amount of \$2,700.00 which the Landlords still retain.

The Tenant testified that he provided the Landlord with a forwarding address which was documented on the move-out Condition Inspection Report (the "CIR") at the end of the tenancy on June 30, 2015. The Tenant also testified and produced into evidence a copy of the move-out CIR and an email which he sent to the Landlords on July 1, 2015 which also detailed their forwarding address.

The Tenant confirmed that he did not give any authority to the Landlords to withhold or make deductions from their deposits. Therefore, the Tenants now seek to claim double the amount back because the Landlords failed to deal properly with the deposits.

### Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on June 30, 2015. I also accept that the Tenants provided the Landlords with a forwarding address on the move-out CIR on June 30, 2015 and that this was further confirmed with the Landlords by email. Therefore, I find the Landlords would have had until July 15, 2015 to deal properly with the Tenants' security deposit pursuant to the Act.

There is no evidence before me the Landlords made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. Therefore, I must find the Landlords failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of \$5,400.00.

As the Tenants have been successful in this matter, I also allow the Tenants to recover the \$50.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenants are issued with a Monetary Order for \$5,450.00. This order must be served on the Landlords. The Tenants may then file and enforce the order in the Provincial Court (Small Claims) as an order of that court if the Landlords fail to make payment. Copies of the order are attached to the Tenants' copy of this decision.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenants by the Landlords. At no time does a 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 a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant.

### Conclusion

The Landlords have breached the Act by failing to deal properly with the Tenants' deposits. Therefore, the Tenants are granted a Monetary Order of \$5,450.00 for double the amount back plus their filing fee. The remainder of the Tenants' Application was withdrawn with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 01, 2016

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Residential Tenancy Branch

