



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mnsd, ff

### Introduction

The tenants apply for the return of their security deposit, less an amount they acknowledge will pay for damage to wall paneling.

Both parties attended the hearing. There are no issues as to service. The landlord was able to speak English and participated in the hearing. At one stage she asked for assistance from her interpreter, which was permitted.

### Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit?

Do the doubling provisions apply?

### Background and Evidence

This tenancy began March 15, 2015 and ended on July 1, 2015. The tenants paid a security deposit of \$650.00, none of which has been returned. The landlord acknowledged receiving the tenant's forwarding address about a week after the tenancy ended. The tenants did not consent in writing to the landlord retaining any of the deposit. The landlord has not filed a formal application to retain the deposit within the required 15 day period. No condition inspection was done, nor requested by the landlord, at the end of the tenancy.

### Analysis

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

In this case the tenants have not requested a doubling of the deposit. Policy Guideline 17 provides that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will

order the return of double the deposit. In this case, the tenants have not specifically waived the doubling of the deposit.

The tenants proposed in their claim and at the hearing to permit the landlord to retain the sum of \$150.00 from the deposit, representing the estimated cost to repair wall panelling damaged during the tenancy. The landlord does not agree to this sum, submitting that the damage was more extensive. In deciding whether or not to permit the \$150.00 to be retained by the landlord, I note that section 38(5) of the Residential Tenancy Act permits a retention of any portion of the deposit only in cases where the landlord's rights to the deposit has not been extinguished. In this case, I find the landlord's right has been extinguished, as a result of the landlord's failure to provide the tenant with two opportunities to participate in a move out inspection, or to generate a move out inspection report. There is no evidence that any statutory grounds extinguish the tenants' right to claim the deposit.

Based upon the above, I find the tenants entitled to recover double the deposit from the landlord, which is \$1,300.00. The tenants are also awarded recovery of the filing fee of \$50.00.

The landlord remains at liberty to file a claim for any damage to the premises attributable to the tenants.

#### Conclusion

The tenants are entitled to double the deposit and recovery of the filing fee. A monetary order in the amount of \$1,350.00, payable by the landlord to the tenants is issued.

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: April 14, 2016

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Residential Tenancy Branch