



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on September 23, 2015 for the return of double their pet damage and security deposit, and to recover the filing fee from the Landlords.

Both Tenants and two witnesses appeared for the hearing. However, only the Tenants provided affirmed testimony. There was no appearance for the Landlords during the 27 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 Tenants 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 September 25, 2015. The Tenants provided the Canada Post tracking numbers into oral evidence to verify this method of service; these numbers are documented on the front page of this decision. The Tenants testified that the Landlords received and signed for these on October 14, 2015 as verified from the Canada Post website. Based on the undisputed evidence of the Tenants, I find the Landlords were served notice of this hearing pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Tenants as follows.

### Issue to be Decided

Are the Tenants entitled to the return of double their security and pet damage deposits?

### Background and Evidence

The Tenants testified that this tenancy started on August 1, 2014 for a fixed term of one year which then continued on a month to month basis thereafter. The written tenancy agreement shows that rent in the amount of \$1,350.00 was payable on the first day of each month. The Tenants paid the Landlords a security deposit of \$675.00 on July 4,

2014 and \$250.00 as a pet damage deposit on July 31, 2014. The Landlords still retain these monies, which are collectively referred to in this decision as the "Deposits".

The tenancy ended when the Tenants provided the Landlords with a written notice dated July 31, 2015 which detailed an end of tenancy date of September 1, 2015. The written notice was provided into evidence.

The Tenants then provided the Landlords with another written notice dated August 21, 2015 detailing their forwarding address. This was sent to the Landlords by regular mail. The same address was also confirmed in an email to the Landlords dated the same date. The Tenants provided the letter and the email into evidence and testified that they used email as a regular form of contact between them. The Tenants testified that prior to the move out condition inspection conducted on September 1, 2015, which was also the end of tenancy date, the Landlords verbally confirmed receipt of the Tenant's forwarding address provided on the email and in the letter.

The Tenants confirmed that at the time of this hearing, they had not received any of the Deposits back and had not given the Landlords any consent in writing to make deductions or withhold them.

### Analysis

The Act provides 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 September 1, 2015 through the written notice provided by the Tenants. I accept the Tenants' undisputed evidence that the Landlords were served their forwarding address on August 21, 2015 by regular mail prior to the tenancy ending. Therefore, pursuant to Section 38(1) of the Act, the Landlords had until September 15, 2015 to deal with the Deposits.

There is no evidence before me that the Landlords dealt with the Tenants' Deposits pursuant to Sections 38(1) and 38(4) (a) of the Act. 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 any 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. Here, I find the Landlords did not have any authority under the Act to keep the Tenants' security deposit.

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 the Deposits in the amount of \$1,850.00.

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 \$1,900.00. 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 voluntary payment. Copies of this order are attached to the Tenants' copy of this decision.

### 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 \$1,900.00 for double the amount back inclusive of the filing fee.

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: April 05, 2016

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Residential Tenancy Branch