



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES VANTAGE (AGENT)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of double their security deposit under the *Act*, and to recover the cost of the filing fee.

The tenants and an agent for the named landlord company (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The agent confirmed having received the documentary evidence from the tenants and that the documents were reviewed prior to the hearing. The agent also confirmed that no documentary evidence was served in response to the application of the tenants.

### Preliminary and Procedural Matter

While the agent stated that the company she is employed with was formerly representing the owner of the property but was no longer doing so, the agent confirmed that there was no communication between the agent and the owner of the property prior to the hearing. As a result, the tenancy agreement submitted in evidence was reviewed and both the owner of the property and the agent are listed as landlords and the only service address for the landlord on the tenancy agreement is the service address of the agent company. Given the above, I am satisfied that the tenants served the landlord correctly based on the service address on the tenancy agreement. Any dispute between the agent company and the property owner is not the responsibility the tenants. As a result, if the tenants are successful with their application, any resulting monetary order will name the agent company listed on the tenancy agreement and it will be the

responsibility of the agent company to pursue the property owner themselves if they so choose.

### Issues to be Decided

- What should happen to the tenants' security deposit under the *Act*?
- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on February 1, 2013 and reverted to a month to month tenancy after February 28, 2014. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. A security deposit of \$650.00 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The tenants vacated the rental unit on July 31, 2015. The parties agreed that the tenants provided their written forwarding address to the landlord on August 11, 2015 which was written on a utility bill. The parties also agreed that the tenants did not surrender any portion of their \$650.00 security deposit. The landlord did not file an application to retain all or a part of the tenants' security deposit and have not returned the tenants' security deposit to date.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that the tenants vacated the rental unit on July 31, 2015. There is also no dispute that the tenants provided their written forwarding address to the landlord on August 11, 2015 which was written on a utility bill. The landlord has not returned the tenants' security deposit or filed a claim towards retaining all or a portion of the tenants' security deposit. Section 38 of the *Act* applies which states:

#### **Return of security deposit and pet damage deposit**

**38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[my emphasis added]

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 the written agreement of the tenants. In the matter before me, I find the landlord received the written forwarding address from the tenants on August 11, 2015, and did not file an application for dispute resolution claiming towards the tenants' security deposit and the landlord did not have any authority under the *Act* to keep any portion of the security deposit as the tenants did not authorize the landlord to retain any portion of their security deposit.

Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit in full or submitting an application claiming towards the tenants' security deposit within 15 days of receiving the forwarding address of the tenants in writing on August 11, 2015. Therefore, **I find** the tenants are entitled to the return of double their original security deposit of \$650.00, which as accrued no interest since the start of the tenancy, for a total of **\$1,300.00**.

As the tenants' claim had merit, **I grant** the tenants the recovery their filing fee in the amount of **\$50.00**.

**I find** that the tenants have established a total monetary claim of **\$1,350.00** comprised of \$1,300.00 for double their original security deposit, plus the recovery of the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$1,350.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

**I caution** the landlord to comply with section 38 of the *Act* in the future.

### Conclusion

The tenants' claim is successful. The landlord has breached section 38 of the *Act*.

The tenants have been granted a monetary order under section 67 in the amount of \$1,350.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: May 16, 2016

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Residential Tenancy Branch