



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover the security deposit and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents by the tenants to the landlords was done in accordance with section 89 of the *Residential Tenancy Act (Act)*; served by registered mail on December 12, 2015. Canada Post tracking numbers were provided by the tenants in documentary evidence. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Are the tenants entitled to recover the security deposit?
- Should the security deposit be doubled under the provisions of s. 38(6)(b) of the *Act*?

### Background and Evidence

The tenants testified that this tenancy started on June 01, 2015 for a fixed term tenancy of a year. Rent for this unit was \$1,150.00 per month due on the 1st day of each month in advance. The tenants testified that they paid \$575.00 for the security deposit just prior to the start of the tenancy.

The tenants testified that the landlord asked the tenants to end the tenancy earlier than the end of the fixed term and the tenants agreed to vacate the rental unit on October 31, 2015,

The tenant testified that they did not give the landlords written permission to keep all or part of the security deposit. The tenants testified that they provided their forwarding address in writing to the landlord on November 17, 2015 and this was delivered to the landlords personally. The tenants have provided a copy of the letter sent to the landlords with their forwarding address and their request for the landlords to return the security deposit to that address.

The tenants testified that the landlords did not complete a move in condition inspection report at the start or end of the tenancy and they only conducted a walkthrough of the unit with the tenants.

The tenants testified that the landlords have not returned their security deposit within 15 days and therefore the tenants seeks to amend their application to recover double the security deposit as permitted under the *Act*.

#### Analysis

Section 38(1) of the Residential Tenancy Act (*Act*) says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Therefore, based on the above and the undisputed evidence presented I find that the landlords did receive the tenants' forwarding address in writing on November 17, 2015. As a result, the landlords had until December 02, 2015 to return all of the tenants' security deposit or file a claim to keep it. As the landlords failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$1,150.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenants are also entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*.

#### Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 38(6)(b) and 72(1) of the *Act* in the amount of \$1,200.00. This Order must be served on the landlords and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlords fail to comply with the Order.

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: July 05, 2016

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Residential Tenancy Branch