



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$2700 for double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail to where the respondents reside on June 14, 2016. With respect to each of the applicant's claims I find as follows:

### issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant(s) is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant(s) is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a 2 year fixed written tenancy agreement that provided that the tenancy would start on September 1, 2015 with the rent of \$2700 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1350 on July 11, 2015.

The tenants filed an Application for Dispute Resolution on November 26, 2015 seeking a monetary order in the sum of \$9885. The landlords filed an Application for Dispute Resolution on November 29, 2015 seeking an Order for Possession based on a notice provided by the Tenant and a monetary order in the sum of \$4050 for loss of prospective rent. The Application for Dispute Resolution filed by both parties does not make a claim keep the security deposit.

The tenants vacated the rental unit on January 31, 2016. The rent for January 2016 was paid. The tenants provided the landlord with their forwarding address in writing on February 3, 2016.

The hearing was held on January 22, 2016 and the decision rendered on February 15, 2016. The arbitrator dismissed the tenant's application, granted the landlord an Order for Possession on 2 days notice and the monetary order against the tenants in the sum of \$4050 for loss of 1 ½ months rent (February 2016 and ½ of March 2016).

The tenants filed an Application for Review. That hearing was held on April 25, 2016 and the decision was rendered on April 27, 2016. The arbitrator who heard the review determined the tenants breached the fixed term tenancy but that the landlords failed to mitigate their loss of rent revenue as the landlords decided to sell the property rather than re-rent it. In conclusion the arbitrator ordered that the application of both the tenant and landlord be dismissed in their entirety.

The landlord submits that they are entitled to keep the security deposit for the following reasons:

- a. Between January 31, 2016 and February 19, 2016 the landlord considered 4 options including finding new tenants through a self-managed process, finding new tenants through a rental agent, finding new tenants through friends and family referral and selling. They had moved to Ontario. They decided the best option was to sell.
- b. The landlord should be compensated for the loss of rent for the period February 1, 2016 until the Order for Possession date of February 17, 2016 by an order permitting the landlords to retain the security deposit.
- c. The landlord has no idea for the rationale of an order to double the security deposit.

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the

parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Section 38(1) and (6) of the Residential Tenancy Act provides as follows:

**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.

Analysis

The tenants paid a security deposit of \$1350 on July 11, 2015. I determined the tenancy ended on January 31, 2016 after the tenants abandoned the rental unit. I do not accept the submission of the landlord that the tenancy ended on February 17, 2016. The landlord had regained possession before that. I further determined the tenants provided the landlord with their forwarding address in writing on February 3, 2016.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlords failed to file an Application for Dispute Resolution claiming against the security deposit within 15 days of February 3, 2016. The landlord does not have a monetary order that can be applied against the security deposit. The parties became

aware that the landlords had obtained a monetary order in the decision dated February 15, 2016. However, that decision was overturned by the review hearing decision dated April 27, 2016. In short the landlords failed to file a claim to keep the security deposit. Further, the review decision was rendered on April 27, 2016. I do not have the legal authority to set aside the findings of that decision. The landlords testified they had a difficult time receiving decisions and orders from the Registry. However, the landlords were aware the monetary order against the tenants had been set aside by the time they received the tenants' Application for Dispute Resolution in June 2016. At that stage they knew that they did not have any legal basis to retain the security deposit.

Policy Guideline #17 includes the following:

"3. Unless the tenant has 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<sup>15</sup>:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act<sup>16</sup>;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim."

As a result I determined the tenant(s) have established a claim against the landlord(s) for double the security deposit or the sum of \$2700

#### Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant(s) the sum of \$2700 plus the sum of \$100 in respect of the filing fee for a total of \$2800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: August 24, 2016

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Residential Tenancy Branch

