



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNSD

### **Introduction**

This Hearing was convened on the Tenant's Application for Dispute Resolution seeking return of the security deposit.

Only the Tenant signed into the teleconference, which remained monitored and open for 30 minutes. The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified and supplied documentary evidence that they served each of the Landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on March 3, 2016, and deemed received under the Act five days later. The Tenant's documentary evidence indicates the registered mail was not claimed by either of the Landlords. I note that refusal to accept registered mail is not a ground for review under the Act. I find the Landlords have been duly served in accordance with the provisions of Section 89 of the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### **Issue(s) to be Decided**

Has there been a breach of Section 38 of the Act by the Landlords?

### **Background and Evidence**

The Tenant paid the Landlords a security deposit of \$650.00 on or about January 1, 2014. The Tenant vacated the rental unit on November 30, 2015.

The Tenant provided the Landlords with her forwarding address on December 1, 2015 when she returned the keys to the rental unit. She testified that the Landlord asked her to return the

cable box, which she did, and told her that the security deposit would be sent through interac in the near future.

The Tenant did not sign over a portion of the security deposit.

The Tenant testified that the Landlord did not perform an incoming condition inspection report or an outgoing condition inspection report.

### **Analysis**

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under Section 38 of the Act, the Landlord is required to handle the security deposit as follows:

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.

[Reproduced as written.]

I note that the Landlords extinguished the right to claim against the security deposit by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

**24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [2 opportunities for inspection]
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Pursuant to Sections 38 and 67 of the Act, I order that the Landlords pay the Tenant double the amount of the security deposit, in the sum of **\$1,300.00**.

### **Conclusion**

The Tenant is hereby given a Monetary Order in the amount of \$1,300.00 for service upon the Landlords. Should the Landlords 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 final and binding on the parties, except as 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: November 16, 2016

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**Residential Tenancy Branch**