



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTGATE CAPITAL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit and the pet damage deposit (the “Deposits”).

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 27, 2016 and successfully delivered to the recipient on August 24, 2016, the landlord did not appear. A Canada post tracking number was provided as evidence of service and a Canada post history.

I find that the landlord has been duly served in accordance with the Act.

The tenants appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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

### Issues to be Decided

Are the tenants entitled to a monetary order for return of double the Deposits?

### Background and Evidence

The tenancy began on April 1, 2015. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were paid by the tenants.

The tenants testified that they vacated the premises on July 4, 2016. The tenants stated that they provided the landlord with a written notice of the forwarding address on July 4, 2016, on the move-out condition inspection report.

The tenants testified that on July 22, 2016, they received from the landlord a portion of their Deposits in the amount of \$224.85. The tenants stated they did not give the landlord permission to keep any of the Deposits and the landlord did not give them a copy of the inspection report.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on July 4, 2016.

I accept the undisputed testimony of the tenants that they did not agree in writing that the landlords may retain any amount from the security deposit or pet deposit and that the landlord only returned a portion of the Deposits.

I find the landlords have breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the landlords were not entitled to retain any portion of the Deposits.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the Deposits. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenants the sum of **\$1,800.00**, comprised of double the pet damage deposit (\$450.00) and security deposit (\$450.00) on the original amounts held. As the landlord has returned the amount of \$224.85, that amount will be deducted from the above amount.

The tenants are given a formal monetary order in the amount of **\$1,575.15**, pursuant to 67 of the Act. The landlords must be served with a copy of this order as soon as possible. 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.

#### Conclusion

The tenants' application for return of double the Deposits is granted. The tenants are granted a monetary order in the above noted amount.

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: January 24, 2017

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Residential Tenancy Branch