



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mnsd, ff

### Introduction

The tenants apply for the return of their security deposit, doubled.

Both parties attended the hearing and made submissions. Documents and evidence were properly exchanged in advance of the hearing.

### Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit, doubled?

Are the tenants entitled to recovery their filing fee from the landlords?

### Background and Evidence

This tenancy began April 1, 2016. The tenants paid a security deposit of \$800.00 at that time. On December 8, 2016 the tenants deemed the premises unlivable as a result of flooding and resulting damage, and declared the tenancy to be frustrated. Remediation work ensued. The tenants were fully vacated on December 14, 2016, and provided the landlords with their new forwarding address on that date. The landlords were out of the country at the time, and advised the tenants they would schedule the move out inspection for a date immediately upon their return on January 6, 2017. The tenants advised they were unable to wait that long, and demanded the return of their security deposit. The landlords advised the tenants the deposit would be returned immediately following the move out inspection, and the return by the tenants of the keys and fobs. On January 9, 2017, the landlords inspected the premises (without the tenants), and advised the tenants the deposit would be sent as soon as the tenants returned their keys and fobs. The tenants mailed these items to the landlord January 15, 2017, and these were received by the landlord on January 22, 2017, who promptly deposited the tenants' deposit into their account on that same date. The tenants have not accepted the deposit, pending a ruling as to whether they are entitled to receive double the deposit.

### Analysis

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim

against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

However, section 24(1) of the Act provides that the right of a tenant to the return of the security deposit is extinguished if the landlord has offered the tenants at least 2 opportunities for an end of tenancy inspection, and the tenant has not participated on either occasion. Section 16 of the Residential Tenancy Regulation requires the landlord and tenant to attempt in good faith to mutually agree on a date and time for the inspection. Section 17(3) of the Regulation requires that the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The circumstances of the present case are quite unusual, given that by virtue of the frustrating event of the flooding, the tenancy ended without notice by either party. The landlord was not in a position on short therefore, to find an agent to deal with the move out issues, or to rearrange their trip.

The tenancy ended and the tenants' forwarding address was given on December 14, 2016. While in most cases this would mark the start of the 15 day period for the return of the deposit, I have determined that by virtue of section 24(1) the tenants' right to recover the deposit did not crystalize until the time of their end of tenancy inspection, as otherwise the extinguishment provisions of that section would be rendered meaningless. I add that the tenants were not at fault in any way for the ending of the tenancy, but I do find the tenants were well aware that the landlords would be out of the country, and based upon their refusal to accommodate the landlord's schedule, I find the tenants failed to attempt in good faith to mutually agree on a date for the inspection, as required under the cited portions of the Regulation. They tenants also effectively retained possession of the premises by virtue of retaining the keys and fobs.

Under these circumstances, I must dismiss, as extinguished, the tenants' claim for return of the double the deposit. As the tenants are unsuccessful in their claim, I also dismiss their request for recovery of their filing fee from the landlords. I note that the landlord has already electronically transferred the deposit to the tenants, and it remains available for them to accept.

#### Conclusion

The tenants claim is dismissed.

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: February 15, 2017

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Residential Tenancy Branch