



# 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 conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on September 14, 2016 for the return of the double their security deposit and to recover the filing fee from the Landlord.

The Tenants and the Landlord appeared for the hearing. However, only the Landlord and the female Tenant provided affirmed testimony. No issues were raised with respect to the service of the Tenants' Application and the exchange of evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the issue to be decided, make submissions to me, and to cross examine the other party on that evidence. While I have carefully considered the evidence in this case, I have only documented that evidence which I relied upon to making findings in this Decision.

### Issue to be Decided

Are the Tenants entitled to the return of double their security deposit?

### Background and Evidence

The parties agreed that this oral tenancy started on April 15, 2016 on a month to month basis. Rent was payable by the Tenants in the amount of \$1,000.00 on the last day of each month. The Tenants paid the Landlord a security deposit of \$500.00 on April 16, 2016 which the Landlord still retains in trust.

The Landlord testified that the tenancy was ended when she served the Tenants with a notice to end tenancy for cause on July 29, 2016 which was handed to the female Tenant by a police officer. The Landlord did not provide this notice to end tenancy into evidence but testified that it had a vacancy date of August 30, 2016.

The Tenant disputed this evidence and stated that the notice to end tenancy was served to them on July 13, 2016 with a vacancy date of August 15, 2016. The Tenant confirmed that the notice to end tenancy was in the approved form and dates on it were contrary to what the Landlord was testifying to. The Tenant testified that she provided the Landlord with a written letter dated July 29, 2016 which was posted to the Landlord's place of residence on the same

day. That letter was provided into evidence and details the Tenants' forwarding address as well as notice to end the tenancy for August 15, 2016.

The Landlord acknowledged receipt of the July 29, 2016 letter but stated she received this on August 15, 2016, not on July 29, 2016. The Landlord stated that she ignored this letter because in it, the Tenants had provided their notice to end the tenancy and at that point she had already served the Tenants with the Landlord's notice to end tenancy.

The Landlord acknowledged that she understood the provisions of the Act with respect to dealing with the Tenant's security deposit and in particular her requirement to file an application within 15 days. The Landlord stated that she decided to ignore this as the Tenants' dog had caused damage to the rental unit and the male Tenant had failed to complete work promised in exchange for non-payment of rent.

The Landlord also stated that she had completed a condition inspection of the rental unit but not in the manner prescribed by the Residential Tenancy Regulations. When I attempted to explain to the Landlord the provisions of the Act when dealing with a tenant's security deposit as detailed below, the Landlord became agitated and hung up abruptly before the hearing was concluded. The hearing then continued in the absence of the Landlord.

The Tenant denied any damage to the rental unit and disputed that they owed her rent in exchange for doing work not completed in this tenancy. The Tenant denied that they gave any written permission to the Landlord for her to keep their security deposit and now claim double the amount of \$1,000.00.

### Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make a formal application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence before me that the Landlord received the Tenant's forwarding address in writing in the form of the Tenants' letter dated July 29, 2016. The Landlord stated that she received this on August 15, 2016 prior to the tenancy ending which she ended through the Landlord's notice to end tenancy on August 30, 2016. Therefore, the Landlord would have 15 days to deal properly with the Tenant's security deposit pursuant to the Act.

A landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. A security deposit is held in trust for the tenant by the Landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel

they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of the security deposit or to deductions to be made from it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that a landlord feels they are entitled to keep the security deposit based on unproven claims. A landlord may only keep the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant.

There is no evidence before me that the Landlord filed an application within 15 days after the tenancy ended or after receiving the Tenant's forwarding address in writing. Neither did the Landlord obtain written consent from the Tenants to keep their security deposit. Therefore, I find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Based on the foregoing, I find the Tenants are now entitled to double the return of their security deposit in the amount of \$1,000.00. As the Tenants have been successful in their Application, I also award them the recovery of the filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenants is \$1,100.00.

The Tenants are issued with a Monetary Order for this amount which must be served on the Landlord. The Tenants may then enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. The Landlord may also be liable for any enforcement costs incurred by the Tenants if voluntary payment is not made. Copies of this order are attached to the Tenants' copy of this Decision.

### Conclusion

The Landlord breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Landlord is ordered to pay the Tenants double the amount of \$1,100.00 inclusive of the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 15, 2017

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Residential Tenancy Branch

