



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenants' application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

### Preliminary Issue – Service of Landlord's Evidence

At the outset of the hearing, the landlord testified that he did not serve the tenants with a copy of his evidence package.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. There would be a denial of the fundamental right to natural justice if I were to consider evidence that was not provided to one of the parties. It would prejudice the tenants to admit evidence that they have not had the opportunity to review. For these reasons, I have not relied on the landlord's evidence package to form any part of my decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 1, 2015 on a fixed term until May 1, 2016. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,000.00 at the start of the tenancy. The tenants vacated the rental unit on May 1, 2016.

The parties agreed a written condition inspection report was not conducted at move-in or move-out.

The tenants testified that on May 11, 2016 they provided their forwarding address in writing via registered mail to the landlord. Although the landlord acknowledged receipt of the tenants forwarding address in writing by way of registered mail he could not recall which day he received it. The tenants provided a Canada Post receipt and tracking number as proof of service for their forwarding address. Based on the testimony of the parties and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the tenants forwarding address on May 16, 2016, the fifth day after its registered mailing.

### Analysis

Pursuant to section 24 of the *Act*, when a landlord fails to properly complete or provide a move-in condition inspection report, the landlord's right to retain the security deposit, is extinguished. Because the landlord in this case did not provide a move-in condition inspection report, he lost his right to claim the security deposit for damage to the property.

As per section 38 of the *Act*, the landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' forwarding address in writing.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenants' security deposit within 15 days of having received the forwarding address on May 16, 2016, section 38 of the *Act* requires that the landlord pay the tenants double the amount of the deposit. Therefore, I find the tenants are entitled to double the value of their security deposit in the amount of \$2,000.00 with no applicable interest. The interest payable on deposits is currently set at 0%.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application, for a total monetary award of \$2,100.00.

Conclusion

I issue a monetary order in the tenants favour in the amount of \$2,100.00 against the landlord.

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: March 20, 2017

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Residential Tenancy Branch