



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the tenants for the return of their security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the landlord by registered mail on June 25, 2009. The landlord confirmed she had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### Issues(s) to be Decided

- Did the tenants give their forwarding address to the landlord in writing?
- Are the tenants entitled to recover double the security deposit back?
- Is the tenant entitled to recover his filing fee from the landlord?

### Background and Evidence

This tenancy started on December 01, 2006 and ended on June 01, 2009. The current rent for the property was \$1,700.00. The tenants paid a security deposit of \$825.00 on November 01, 2006. A walk through was completed with the landlord at the start of the



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tenancy and the condition of the property was noted on a piece of paper signed by all parties.

The tenants gave notice to move from the property and prior to the move out the landlord agreed to clean the carpets at their own expense to enable them to show the property to new tenants. Along with this agreement the tenants agreed that the landlords' agent could come into the property prior to their move out and redecorate in preparation for new tenants. Both the tenant and landlords agent agrees that a final walk through was completed before the tenants moved out but no report was completed. The tenants agreed to the landlord deducting the costs from their security deposit for the garden to be tidied up at a cost of \$73.50 and a broken blind to be replaced at a cost of \$117.54.

The landlords agent testifies that during this walk through he also found the wardrobe doors needed to be repaired and there were a large amount of holes in the walls that required filling. He testifies that he mentioned to the tenant that there were these additional damages to be paid for. The tenant testifies that they did not agree to these charges being deducted from the security deposit. The tenant testifies that they cleaned the property before they vacated the property and gave the landlord their forwarding addresses in writing on June 01, 2009.

The landlord sent the tenants to separate cheques for the remainder of the security deposit of \$237.50 which was a half share of each tenants security deposit less the deductions the landlord made for the cost of the blinds, gardening and damages. Inadvertently the landlord had put the wrong year date on the cheques which made them invalid. These cheques were dated 2008-06-10. The tenants informed the landlord of the incorrect dates and new cheques were issued dated 2009-06-12.



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The tenants did not receive these until July 02, 2009. One of the tenants has since cashed his cheque and the other tenant has chosen not to until after this hearing.

## Analysis

I find that the landlord did receive the tenants forwarding address in writing. The *Residential Tenancy Act* s.38 states;

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



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(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find in favour of a portion of the tenants claim for the return of double the security deposit. The landlord has received the tenants forwarding address and has not returned the security deposit nor filed an application to retain the deposit for damages not agreed to. Therefore as stated in s.38 of the *Act* the tenant is entitled to receive double the original amount back. However, by the tenants own admission they agreed that the landlord could retain \$191.04 to cover the costs of gardening and blind replacement Therefore; this amount will be deducted from the original amount. I also find that the landlord did in good faith send cheques to the tenants for a portion of the security deposit and this amount will also be deducted. The tenants are also entitled to recover any interest that has accrued on the original amount.

A Monetary Order has been issued for the following amount:

Original security deposit	\$825.00
Less amount already paid by landlord	(-475.00)
Double the remainder of the original amount	\$317.92
Plus accrued interest on original amount	\$25.67
Total amount due to each tenant	<b>\$171.79 X2</b>

As the tenant has been successful with the application he is also entitled to recover the cost of filing this application of **\$50.00** which will be added to the Monetary Order bringing the total for one tenant to **\$221.79**.



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## Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$393.58**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

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: August 20, 2009.

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Dispute Resolution Officer