



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This is an application by the Tenants for a monetary order for return of double the security deposit and to obtain the interest payable on the original amounts held.

One of the Tenants appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on January 3, 2012. Under the Act mail is deemed received five days after mailing. Despite this the Landlord did not appear at the hearing. The Tenant testified that this mail had been returned. I note that refusal or neglect to accept registered mail is not a ground for review under the Act. I find the Landlord has been served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

### Background and Evidence

The Tenants testify they paid a security deposit of \$450.00 to the Landlord on September 1, 2007. The Tenants vacated the premises on September 29, 2011.

Prior to moving out of the rental unit the Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to by using a change of address notice from Canada Post. The Tenants also gave the Landlord a written notice

of the forwarding address to return the deposit to by using registered mail, sent on December 13, 2011.

The Tenants did not sign over a portion of the security deposit. There were no prior dispute resolution hearings between the parties.

The testimony of the Tenant was that the Landlord did not perform incoming or outgoing condition inspection reports.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 38 of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

I find the tenancy ended on September 30, 2011, and the Landlord is deemed served with the forwarding address of the Tenants as of December 18, 2011.

There was no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, plus the interest, as required under section 38 of the Act.

Furthermore, by failing to perform incoming or outgoing condition inspection reports the Landlord extinguished the right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenants by the Landlord. This is one of the reasons the Act requires the Landlord to hold the deposit in an interest bearing account.

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.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or the interest.

### Conclusion

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$909.04**, comprised of double the security deposit (2 x \$450.00) and the interest on the original amounts held (\$9.04).

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord 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.

This decision is final and binding on the parties, except as provided under the Act, and 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 08, 2012.

---

Residential Tenancy Branch