

## **DECISION**

Dispute Codes      MNSD, FF

### **Introduction**

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenants submitted 1 evidence package and the Landlord submitted 1 evidence package. Both parties have acknowledged receiving the others evidence. As such, I find that both parties have been properly served with the notice of hearing and evidence packages as deemed under the Act.

### **Issue(s) to be Decided**

Are the Tenant's entitled to a monetary order for the return of double the security deposit?

### **Background and Evidence**

Both parties agreed that the Tenancy ended on January 31, 2012 and that the Tenants paid a security deposit of \$450.00. The Tenants state that the forwarding address in writing was given to the Landlord on December 31, 2011. The Landlord has confirmed this in her direct testimony.

The Tenants state that the Landlord has failed to return the security deposit as of the date of the hearing. The Landlord has confirmed this in her direct testimony citing issues with the condition of the rental unit. The Tenants are seeking the return of double the security deposit (\$900.00 = \$450.00 X 2).

### **Analysis**

Section 38 of the Residential Tenancy Act states,

**Return of security deposit and pet damage deposit**

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

**(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**

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

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

As both parties have confirmed that the \$450.00 security deposit was not returned within 15 days of the later of the end of tenancy or when the forwarding address in writing was given to the Landlord or that the Landlord failed to apply for dispute resolution to dispute the return of the security deposit, I find that the Tenants have established a claim for \$900.00 under section 38 (6) of the Residential Tenancy Act. The Tenants are also entitled to recovery of the \$50.00 filing fee. The Tenants are granted a monetary order under section 67 for the balance due of \$950.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Tenants are granted a monetary order for \$950.00.

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: April 20, 2012.

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Residential Tenancy Branch