



# 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 way of conference call in response to the tenants' application for a Monetary Order for double the security deposit and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on April 10, 2014 and again on July 15, 2014. Canada Post tracking numbers were provided by the tenants in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for double the security deposit?

### Background and Evidence

The tenants testified that this tenancy started on March 31, 2013 for a fixed term tenancy that ended on February 28, 2014. Rent for this unit was \$1,500.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$750.00 on February 11, 2013. The tenants testified that the landlord was sent their forwarding address by email on March 08, 2014 as the tenants did not have an alternative service address for the landlord. The tenants testified that the landlord responded to their e-mail. A copy of the e-mail correspondence between the parties has been provided in documentary evidence.

The tenants testified that the landlord was served the hearing documents to the dispute address as this was the only address provided for the landlord for service of the hearing documents. The tenants testified that they emailed the landlord and asked for an alternative address but the landlord did not provide one. The tenants testified that the hearing documents were sent to this address as it is the place in which the landlord conducts her business as a landlord. The first hearing package was returned to the tenants so the tenants sent a second hearing package by registered mail.

The tenants testified that the landlord has failed to return the security deposit within 15 days of receiving the tenants' forwarding address in writing. The tenants testified that they requested the landlord return their security deposit to that address. The tenants testified that they had not given the landlord written permission to keep all or part of the security deposit; however, the tenants agreed that they did cause some damage to a table cloth in the unit that belonged to the landlord and agreed at the hearing that the landlord may keep \$15.00 from the tenants' monetary award.

### Analysis

With regard to service of the hearing documents; I have reviewed the tenancy agreement and find the landlord has not provided an address for service on that

agreement. I further find the tenants had asked the landlord if the landlord had an alternative address for the tenants to send the landlord the hearing package. There is no evidence in the email exchange that the landlord responded and gave the tenants an alternative address for service. S. 89(1)(c) of the *Act* states:

**89** (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

*(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord*

As the landlord did not provide any other address to the tenants for service of any documents then I deem that the landlord has been served, for the purpose of the *Act*, with the hearing documents as this is the landlord's business and therefore the landlord has been served to an address at which the landlord carries on their business.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on March 08, 2014. As a result, the landlord had until March 23, 2014 to return the tenants' security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit.

Therefore, I find that the tenants have established a claim for the return of double the security deposit to an amount of **\$1,500.00** pursuant to section 38(6)(b) of the *Act*.

As the tenants have orally agreed at the hearing that the landlord may keep **\$15.00** of the security deposit for damage to a table cloth I will deduct this amount from the tenants' monetary award.

I find the tenants are also entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants as follows:

Double the security deposit	\$1,500.00
Filing fee	\$50.00
Less deduction agreed upon at the hearing	(-\$15.00)
Total amount due to the tenants	\$1,535.00

### Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$1,535.00. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced 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: July 29, 2014

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Residential Tenancy Branch

