



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security and pet damage deposits paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenants appeared at the hearing. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants testified that they served the Landlord with the Notice of Hearing and their Application for Dispute Resolution by registered mail, sent on September 23, 2014 and deemed received under the Act five days later. The Tenants testified that they sent the registered mail to the place of business for the Landlord. They testified that when they checked the tracking information online with Canada Post the item was signed for by an employee of the Landlord on September 26, 2014. Therefore, I find the Landlord has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlord?

### Background and Evidence

The Tenants paid the Landlord a security deposit of \$500.00 on or about July 15, 2013. The Tenants then purchased a pet and paid the Landlord a pet damage deposit in two

equal installments, totaling \$500.00, in October of 2013. I note that interest is not payable on deposits received in 2013.

The Tenants vacated the premises on June 30, 2014.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it to the Landlord on or about June 30, 2014, in an email. The Landlord replied to this email several weeks later, informing the Tenants that he was retaining the deposits as there was carpet cleaning in the rental unit.

The Tenants testified they did not sign over a portion of either deposit or agree to the Landlord making these deductions.

The Tenants testified that the Landlord performed an incoming and outgoing condition inspection report. Although, the Tenants further testified that the Landlord did not provide them with a copy of the outgoing report.

### Analysis

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to the Act, the Landlord is required to handle the security deposit as follows:

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

[Reproduced as written.]

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of 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.

There was also 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, as required under section 38.

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

Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenants by the Landlord.

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. If the Landlord and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with 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 or pet damage deposits.

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 **\$2,050.00**, comprised of double the deposits (2 x \$1,000.00) and the \$50.00 fee for filing this Application.

### Conclusion

The Landlord has breached section 38 of the Act by failing to return the deposits or claim against them within the statutory time frames. The Act now requires the Landlord to pay the Tenants double the sum of the deposits, and I award them their filing fee as well. The Tenants have therefore established a monetary order against the Landlord for \$2,050.00.

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 otherwise 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: April 20, 2015

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Residential Tenancy Branch

