



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the male landlord.

At the outset of the hearing, I clarified with the applicants that they had reversed their names on their Application for Dispute Resolution and that I would ensure the names were listed on this decision correctly.

### Issue(s) to be Decided

The issues to be decided are whether the tenants entitled to return of double the amount of the security deposit and to recover, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on October 1, 2013 as a 6 month and 1 day fixed term tenancy that converted to a month to month tenancy on April 2, 2014 for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid.

The parties agree that the tenants vacated the rental unit on October 31, 2014. They also agree the tenants provided their forwarding address in writing by leaving it on the door and on a shelf in the rental unit. The landlord acknowledges receiving these on October 31, 2014.

The parties agree that the male landlord and the male tenant began a move out condition inspection on October 31, 2014. Both parties testified that the other abandoned the inspection mid-way through. The tenants submit the landlord did not then provide a written notification of a second opportunity to complete the inspection.

The parties agree the landlord did not provide the tenants with a copy of a condition inspection report at any time since the end of the tenancy.

### Analysis

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(1) of the *Act* states that the right of a tenant to the return of the security deposit or pet damage deposit, or both, is extinguished if the landlord has complied with the requirements set out in Section 35 of the *Act* and Section 17 of the Regulation and the tenant has not participated in the inspection.

Section 36(2) stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against the deposits for damage to the residential property is extinguished if the landlord has not complied with the requirements of Section 35 of the *Act* and Section 17 of the Regulation; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

Based on the testimony of both parties I find that the landlords did comply with the requirements under Section 35 to conduct a move out inspection on October 31, 2014 and that the tenants complied by the male tenant attending at the time. As such, I find there was no requirement for the landlords to offer a second opportunity because the tenants had agreed and attended the scheduled time.

However, I find the landlords failed to complete and provide a copy of a move out Condition Inspection Report as required under Section 36(2). I therefore find the landlords have extinguished their right to claim against the deposit for any damage to the rental unit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the testimony of both parties I find the tenancy ended on October 31, 2014 and that the landlords had the tenants forwarding address in writing on October 31, 2014. As a result, I find the landlords had until November 15, 2014 to either return the deposit in full or file an Application for Dispute Resolution claiming against the deposit for compensation for losses resulting from the tenancy but not related to damage to the rental unit.

I also find the landlords did not return the deposit or file an Application to claim against the deposit and as such they have failed to comply with Section 38(1) and the tenants are entitled to double the amount of the deposits pursuant to Section 38(6).

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,500.00** comprised of double the amount of the security deposit.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced 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 08, 2015

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Residential Tenancy Branch

