



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit and pet damage deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from November 01, 2013 to October 31, 2014. The agreement provides that monthly rent of \$1,500.00 is due and payable in advance on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$400.00 were collected. A move-in condition inspection report was not completed.

After deciding that there was a problem with ants in the unit, the tenants gave verbal notice over the telephone on April 10, 2014 of their intent to end tenancy prior to the end of the fixed term. The tenants relocated from the unit on or about May 01, 2014, and had removed all of their possessions by May 15, 2014. Rent was paid up to May 15, 2014, and on instructions from the landlord the tenants left the keys at the unit. A move-out condition inspection report was not completed.

The landlord testified that new renters were found effective from June 01, 2014, and that monthly rent agreed to was \$1,300.00, or \$200.00 less than the subject tenancy.

By letter dated December 03, 2014, the tenants informed the landlord of their forwarding address for the purposes of repaying their security deposit and pet damage deposit. As the landlord had not provided an address for service on the tenancy agreement, the

tenants' letter was mailed to what they determined to be the property owner's address. As well, a copy of the tenants' letter was personally delivered to the new renters who had taken possession of the unit following the end of the subject tenancy. Thereafter, the landlord took delivery of the tenants' letter from the new renters in the unit, and contacted the tenants by telephone on December 17, 2014. A conversation followed, and it became clear to the tenants that the landlord was not prepared to return either of the deposits. Subsequently, the tenants filed their application for dispute resolution on January 20, 2015. The landlord still retains the security deposit and pet damage deposit, and has not presently filed an application for dispute resolution.

The landlord testified that the address used by the tenants to inform her of their forwarding address is unknown to her, and during the hearing she provided her correct mailing address.

### Analysis

Based on the documentary evidence and testimony, the various aspects of the tenants' application and my related findings are set out below.

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\$750.00: *repayment of security deposit*

\$400.00: *repayment of pet damage deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit, and must pay the tenant double the amount of the security / pet damage deposit.

I find that the landlord was informed by the tenants in writing of their forwarding address in December 2014, several months after the end of tenancy. I find that the landlord neither repaid the deposits, nor filed an application for dispute resolution within 15 days after that time. Pursuant to the aforementioned circumstances, a tenant would be entitled to the double return of both deposits. However, during the hearing the tenant waived her entitlement to the double return of the deposits, and testified that she seeks the return of only the original amounts collected.

As the tenants did not provide the landlord with written consent to retain the deposits, as landlord did not either repay the deposits or file an application to retain them, and as the tenants have applied for the full return of both deposits, I find that the tenants have established entitlement to repayment as claimed in the total amount of **\$1,150.00**.

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\$20.00: *Affidavit of Service*

\$3.60: *photocopies*

\$4.17: *photos*

\$2.00: *postage stamps*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, all of the above aspects of the application are hereby dismissed.

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**\$50.00:** *filing fee*

As the tenants have succeeded with the principal aspect(s) of their application, I find that they have also established entitlement to recovery of the full filing fee.

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### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,200.00** (\$1,150.00 + \$50.00). Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and 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 29, 2015

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Residential Tenancy Branch

