



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, FF

### Introduction

This was a hearing with respect to the tenants' application for a monetary award and an order for the return of a security deposit. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord did not attend although he was served with the application and Notice of Hearing sent by registered mail on December 24, 2015.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?  
Are the tenants entitled to the return of their security deposit?

### Background and Evidence

The rental unit is an apartment in Richmond. Pursuant to a tenancy agreement signed September 22, 2015 the tenancy was set to commence October 1, 2015. The tenancy was for a one year term. The monthly rent was \$1,100.00, payable on the first of each month. On September 22, 2015 the tenants paid the landlord the sum of \$2,200.00 by two cheques, each in the amount of \$1,100.00. The tenancy agreement authorized the tenants to have a pet cat.

The tenants testified that the rental unit was overrun with silverfish. The tenants complained to the landlord about the problem. They were told that it was a problem throughout the building. The tenants said that the landlord did not take proper steps to eradicate the silverfish infestation and his treatments were ineffective. The tenants gave the landlord notice that they intended to move out of the rental unit by November 30, 2015.

The tenants testified that the landlord told them that if they would vacate the rental unit by November 15, 2015 he would reimburse them \$1,100.00. Later the landlord said he would reimburse them \$1,200.00 to vacate by November 15<sup>th</sup>. The tenants requested

that the landlord refund their \$1,100.00 security deposit and pay them an additional \$550.00, being half the rent paid for November in return for vacating by November 15<sup>th</sup>.

The tenant said that the landlord agreed to return the sum of \$1,200.00 to them if they moved out by November 15, 2015. The tenants moved out by November 15<sup>th</sup>. They said the landlord failed to honour the agreement after they moved out and has refused to return any part of their security deposit or rent paid for November.

According to messages exchanged between the parties, the landlord changed his position and said he would refund only \$550.00, but he would rescind this offer if the tenants "went to court". The tenants responded saying by dropping off the keys and delivering their forwarding address to the landlord on November 15, 2015.

### Analysis

There was no written agreement between the parties to pay the tenants the sum of \$1,200.00 if they vacated the rental unit by November 15<sup>th</sup>. There appears to have been negotiations by text message and by telephone, but I am unable to find that there was ever a concluded agreement between the parties. The fact that there were unsuccessful negotiations between the parties about payment of a sum of money including the return of the tenants' security deposit does not alter the landlord's obligations to deal with the security deposit in accordance with the provisions of the *Residential Tenancy Act* at the end of the tenancy.

The tenants provided the landlord with their forwarding address in writing on November 15, 2015 and the tenancy ended on that date.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenants provided the landlord with their forwarding address in writing and the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act*. The landlord did not have the tenants' consent to retain the deposit; he did not file an application to claim the deposit within 15 days of the end of the tenancy and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$2,200.00, being double the amount of their original deposit. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$2,250.00 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The tenants' application has been allowed and they have been granted a monetary order in the amount stated.

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: August 17, 2016

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Residential Tenancy Branch