



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD & FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request to retain \$325.00 of the security deposit plus interest for damages.

The tenant's application is a request for return of double the \$400.00 security deposit plus interest.

## Decision and reasons

### Landlords application

The landlord has filed a claim against the security deposit for damages however sections 23 and 24 of the Residential Tenancy Act state:

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (3), and
  - (b) the tenant does not participate on either occasion.

## Consequences for tenant and landlord if report requirements not met

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case the landlord has admitted that she did not comply with the requirement to do a move in inspection, and therefore her right to claim against the security deposit for damage has been extinguished.

Therefore the landlords claim against the security deposit is dismissed without leave to reapply.

This decision only applies to a claim against the security deposit and does not prevent the landlord from filing a straight monetary claim against the tenants.

## Tenant's application

The landlord has not returned the tenants security deposit and the landlord's right to claim against the security deposit for damages was extinguished.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

Since the landlord's right to claim against the security deposit has been extinguished, the landlord should have return the security deposit within the 15 day time limit. The landlord failed to do so and instead applied for dispute resolution to make a claim against the security deposit even though she did not have the right to do so.

This tenancy ended on June 30, 2009 and the landlord had a forwarding address in writing by June 30, 2009 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore, it is my decision that the landlord must pay double the amount of the security deposit to the tenants, plus interest on the deposit.

The tenants paid a deposit of \$400.00 and therefore the landlord must pay \$800.00 plus interest of \$2.28, for a total of \$802.28.

I further ordered that the landlord bear the \$ 50.00 cost of the filing fee paid by the tenants for their application for dispute resolution.



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## Conclusion

The landlords application has been dismissed without leave to reapply and on the tenants application I have issued an order for the landlord to pay \$852.28 to the tenants.  
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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: November 05, 2009.

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Dispute Resolution Officer