



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

- An Order for the return of the security / pet deposits (\$2200.00) - Section 38
- An Order to recover the filing fee for this application - Section 72.

The tenant orally withdrew their application for a Monetary Order for loss.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided evidence they sent the registered mail – submitting the receipt and the requisite tracking number for the registered mail. The tenant tacked the mail and confirmed it had been received by the landlord.

The tenant was given full opportunity to be heard, to present evidence and to make relevant submissions. The tenant acknowledged sending to the landlord all evidence sent to the Branch.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy began on August 01, 2011 and ended January 31, 2012 when the tenant vacated. Rent in the amount of \$2200 was payable under the tenancy agreement in

advance on the 1<sup>st</sup>. (first) day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the respective amounts of \$1100.00 each – for a total of \$2200.00, which the landlord still holds.

The landlord and tenant conducted a condition inspection of the rental unit at the outset, and at the end of the tenancy. The landlord purportedly completed an inspection report for both occasions, but it is the tenant's testimony that they were not provided with a copy of the respective reports, as required by the Act and Regulations. None the less, the tenant testified that at the end of the tenancy, there were no deficiencies to the rental unit noted by either party and the parties agreed as to the full return of both deposits back to the tenant. The landlord stated to the tenant that they would return all deposits to the tenant. The tenant further testified that in mid-February 2012 they subsequently e-mailed their forwarding address to the landlord which the landlord purportedly replied confirming receipt of it. I do not have benefit of this document and the tenant claims they did not include it in the evidence package to the landlord. Regardless, the landlord has not returned any of the deposits and purportedly has made claims they are now keeping the deposits.

### **Analysis**

On preponderance of all the evidence in this matter, I have reached a Decision.

The Act and the ancillary Regulations respecting deposits are very clear and prescribe the obligations of each party. Sections 23, 24 and 35, 36 of the Act state prescribe how condition inspections are to be conducted at the outset and the end of a tenancy, and the consequences for each party if they do not fully participate in the processes. The End of Tenancy requirements are stated in Sections 35 and 36 of the act as follows; **(emphasis for ease)**

#### **Condition inspection: end of tenancy**

**35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) **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.**

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

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

**36** (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 complied with section 35 (2) [*2 opportunities for inspection*], and

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

(2) Unless the tenant has abandoned the rental unit, **the right of the 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 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

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

I find that the landlord did not comply with Section 35(2), therefore the landlord's right to claim the deposits has been extinguished. As a result, I find that since the landlord is not entitled to make a claim to retain the deposits - they may not keep it and must return them. The tenant is not entitled to *double* the return of the security deposit as they have not established that they provided the landlord with a *written* forwarding address, as required by Section 38 of the Act. None the less, Residential Tenancy Policy #17, in part, states;

## RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that as the landlord may not keep the security deposit it is only appropriate that the original amount of the deposits of \$1100.00 each be returned to the tenant. **I grant** the tenant the original security deposit in the amount of **\$1100.00**, and the original pet damage deposit in the amount of **\$1100.00**, without leave to reapply. As the tenant was successful in their claim they are entitle to recover the filing fee of **\$50.00**, for a total entitlement of **\$2250.00**.

### **Conclusion**

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$2250.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: May 08, 2012

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Residential Tenancy Branch