



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD MNDC O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the pet and/or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

The respondent Tenant appeared at the teleconference hearing however no one appeared on behalf of the applicant Landlord despite this hearing being convened to hear the matters pertaining to the Landlord's application.

### Issue(s) to be Decided

1. Is the Landlord entitled to retain the deposits?
2. Is the Landlord entitled to a monetary order for damage or for loss under the Act, regulation or tenancy agreement?

### Background and Evidence

There was no additional evidence or testimony provided in support of the Landlord's claim as no one attended the hearing on behalf of the Landlord.

The Tenant submitted 63 pages of documents into evidence which included, among other things: a copy of the Tenant's written statement; the original tenancy agreement; and numerous e-mails between the Tenant, Landlord and the Landlord's Agent.

The Tenant affirmed that she entered into a written tenancy agreement with the Landlord on April 7, 2011 for a tenancy that was to be effective May 1, 2012. She stated that the Landlord was in a rush to leave town so she gave them possession of the unit on April 7, 2011 after they conducted the walk through and completed the move in condition form. She advised that the Landlord had a second copy of the tenancy

agreement with her at that time, which is why the Tenant got a copy, however the Landlord only had one condition form and never provided the Tenants with a copy of it.

The Tenant referenced her e-mail evidence in support of her testimony that the move out condition inspection was originally scheduled for May 31, 2012, and the Landlord wrote back to delay the inspection until June 7, 2012. The Tenant pointed to another e-mail which indicated that the Landlord conducted the inspection in the Tenant's absence and everything was deemed to be clean and okay. The Tenant said she never attended a move out inspection and never received a copy of the inspection report which allegedly took place in her absence.

The Tenant asserted that she paid a security deposit of \$675.00, a pet deposit of \$225.00, a key fob deposit of \$50.00, and later suffered a NSF charge of \$42.50 when the Landlord cashed a post dated cheque which was for a period after the tenancy was ended by the Landlord.

The Tenant advised that although there are numerous e-mails stating a cheque has been issued and sent to her by the Landlord for \$767.50 (\$675.00 security deposit, \$50.00 key fob, NSF \$42.50) she has never received such a cheque.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time. Accordingly, in the absence of any evidence or submissions from the applicant Landlord I order the application dismissed without liberty to reapply.

The *Residential Tenancy Policy Guideline # 17 Return or Retention of Security Deposit Through Arbitration* stipulates that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit on a landlord's application to retain all or part of the security and or pet deposit, **whether or not the tenant has applied for arbitration for its return** [emphasis added].

After consideration of the evidence before me, in the absence of any disputed testimony from the Landlord who did not appear despite this proceeding being convened to hear the Landlord's application, I accept the version of events as discussed by the Tenant and corroborated by evidence. Accordingly, I find the Tenant paid a security deposit of \$675.00 and a pet deposit of \$225.00 on April 7, 2011.

The evidence supports the Landlord did not comply with section 23 of the Act by not providing the Tenant a copy of the move in condition inspection report and the Landlord did not comply with section 24 of the Act as the Landlord did not complete the move out inspection in the presence of the Tenant [Section 23 and 24 of the Act are reproduced at the end of this decision].

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not provide the Tenant a copy of the move-in report and did not carry out a move-out inspection or complete condition inspection report, she lost her right to claim the security deposit for damage to the property.

Section 38(7) of the Act stipulates a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise. There is no evidence to indicate there had been pet damage therefore, the Landlord had 15 days to return the deposit.

The Landlord was therefore required to return the security deposit and pet deposit to the Tenants within 15 days of the later of the two of the tenancy ending (May 31, 2012) and having received the Tenants' forwarding address in writing. The Landlord received the Tenant's forwarding address May 30, 2012, by e-mail but did not return the security or pet deposits within 15 days of that date.

Because the Landlord's right to claim against the security or pet deposit for damage to the property was extinguished, and she failed to return the Tenant's security and pet deposits within 15 days of having received the forwarding address, section 38 of the Act

requires that the Landlord pay the Tenant double the amount of the security and pet deposits plus interest. [Section 38 of the Act is reproduced at the end of this decision]

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

The Tenant has been issued a Monetary Order in the amount of **\$1,800.00 (2 x \$675.00 + 2 x 225.00 + interest of \$0.00)**. This Order is legally binding and must be served upon the Landlord.

The Tenant is at liberty to file her own application to seek recovery of any other losses she may have suffered.

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 16, 2012.

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Residential Tenancy Branch

## RESIDENTIAL TENANCY ACT

### Condition inspection: start of tenancy or new pet

- 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.

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition*]

*report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.