



# 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 by way of conference call in response to an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and the landlord attended the conference call hearing and both parties provided evidentiary material in advance of the hearing. The tenant was assisted by an interpreter who was affirmed to well and truly translate the evidence and what was said from the English language to the Korean language and from the Korean language to the English language to the best of the interpreter's knowledge, skill and ability. The parties gave affirmed testimony and were given the opportunity to cross examine each other on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing, the tenant stated that the Tenant's Application for Dispute Resolution contains an incorrect spelling of the tenant's name. The tenant applied to amend the application, which was not opposed by the landlord. The amendment was ordered, and the style of cause has been changed in this Decision to reflect the amendment and the correct spelling of the tenant's name.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of all or part of the pet damage deposit or security deposit or double the amount of the security deposit or pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act*?

### Background and Evidence

This fixed term tenancy began on March 1, 2009 and expired on April 30, 2011 and then reverted to a month-to-month tenancy which ultimately ended on October 21, 2011. Rent in the amount of \$1,900.00 per month was payable in advance on the 1<sup>st</sup> day of

each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$950.00, of which \$250.00 was returned to the tenant.

The tenant testified that the move-in and move-out condition inspection reports, which were both completed on the same form, contains signatures of the tenant. A copy of the report was provided for this hearing, and it contains signatures of the tenant in 5 places. The tenant stated that the document showed "N/A" on the portion of the form that states that the tenant agrees to deductions from the security deposit or pet damage deposit., and testified that the landlord added the markings to show that the tenant agreed that the landlord could retain \$700.00 of the security deposit. The tenant further testified that the landlord was not authorized to keep any portion of the security deposit, and the tenant had signed the form in blank because the landlord told the tenant that if the tenant did not sign, the tenant would not get back any portion of the security deposit. The landlord had showed up at the rental unit at 4:00 in the morning and asked the tenant to sign the form, so the tenant did.

The tenant provided the landlord with a forwarding address in writing on May 23, 2012 by registered mail. The landlord sent the tenant a letter dated June 1, 2012 which referred to a deduction as part of the \$700.00 for painting the rental unit. The tenant did not dispute that the painters were denied access to finish painting during the tenancy because of the fumes and discomfort of the tenant, but the evidentiary material of the tenant states that the painting cost was never mentioned to the tenant. The invoice is dated May, 2012 and the repairs were being completed in 2009.

The tenant also testified that the landlord inspected the rental unit very thoroughly twice and does not understand why the full security deposit wasn't returned to the tenant.

The landlord testified that \$674.00 of rent money was returned to the tenant because the landlord agreed that the tenant could move out early and the landlord had another tenant wanting to move in. The landlord also returned \$250.00 of the security deposit to the tenant because the tenant had agreed to that in writing.

The landlord further testified that the rental unit was originally rented through an agent. The landlord re-negotiated a tenancy agreement with the tenant on May 1, 2009 and the parties re-completed a move-in condition inspection report. No one had resided in the rental unit previously, and it was rented to this tenant furnished.

The landlord arrived at the rental unit on October 20, 2012 to conduct the move-out condition and the parties reviewed the inventory. The tenants were not ready to move out, and told the landlord that they were not going to stay in a hotel, so October 21, 2012 at 4:00 a.m. was agreed by the tenant for the inspection because the tenant was leaving for a holiday to Korea at 6:00 or 6:30 a.m. on October 21, 2012. The landlord made deductions from the security deposit, being \$50.00 for 1 ½ days of cleaning, one days rent and painting. The stove top, oven, fridge, bathtub, bedding and towels were not cleaned by the tenant prior to October 20, 2012.

During the course of the tenancy deficiencies were identified by the developer. Repair to cracks in all the suites was necessary and the developer was going to re-seal and re-paint the suites. The repairs were being done during November, 2009. The tenant was given notice for the repairs to be completed, which were partially completed, but the tenant refused to continue to allow access due to the fumes. The landlord was charged for those repairs, but would not have been charged if the work was completed at that time. The landlord provided copies of emails exchanged between the landlord and the contractors as evidence, as well as a copy of an invoice in the amount of \$668.33.

The landlord also provided copies of 2 other documents which set out the amounts the landlord requested from the tenant and that the tenant agreed in writing to the landlord retaining the sum of \$700.00 of the security deposit.

After the tenant moved out of the rental unit, the parties exchanged emails, and the tenant sent the landlord a registered letter which contained the tenant's forwarding address. The landlord replied to the letter in writing on June 1, 2012 acknowledging receipt of the tenant's forwarding address, and stating that the parties had agreed to a move-out date of October 20, 2012 and the landlord had refunded the tenant the rent for the last 11 days of the tenancy, but the tenant was not out of the rental unit until October 21, 2012 and therefore, the landlord had considered it reasonable to recover the extra day of rent from the security deposit. The letter also states that the parties had signed an agreement on October 21, 2011 agreeing to deductions from the security deposit in the amount of \$700.00, leaving a balance owing to the tenant in the amount of \$250.00. The letter also states that section 6.5 of the tenancy agreement provides for access to the rental unit by the landlord for necessary repairs.

### Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit to a tenant or apply for dispute resolution to keep any portion of it within 15 days of the later of the date the tenancy ends and the date the tenant provides a forwarding address in

writing. A landlord may only keep all or part of a deposit if the tenant agrees in writing. In this case, I find that the tenant provided a forwarding address in writing on May 23, 2012 by registered mail. The *Act* states that documents delivered by that method are deemed to be served 5 days after mailing, and therefore, I find that the landlord is deemed to have received the forwarding address on May 28, 2012. The landlord returned a portion of the security deposit on June 1, 2012.

The issue to be decided is whether or not the tenant has established that the tenant did not authorize the landlord to keep \$700.00, not whether or not the landlord has satisfied me of the amount of damages incurred. The landlord has not made an application for dispute resolution. However, the expenses the landlord claims were incurred by the tenant's actions must justify the amount the landlord retained from the security deposit.

I have reviewed the condition inspection report which contains signatures of the landlord and the tenant. The tenant testified that the landlord changed the form after the tenant had signed it. When the tenant signed it, the landlord had written "N/A" on a line, then the landlord crossed that out and added "\$700" without the tenant's knowledge. There is definitely something written that has been scribbled out to ensure that it is not legible and "\$700" is written beside it.

I further consider the evidence of the tenant that the tenant was never told in 2009 that if the painters were not permitted into the rental unit to finish painting, the tenant would be responsible for the cost at the end of the tenancy. There is no evidence before me to suggest that the parties agreed to that or that it was ever mentioned or considered during the tenancy.

I have also reviewed the document signed by the parties on October 21, 2011. The document shows that \$589.58 for painting, \$60.42 for an extra days rent, and \$50.00 for cleaning were deducted from a \$950.00 security deposit which totals \$250.00 to be returned to the tenant. That document is also signed by both parties. Another document containing the same information has also been provided on lined paper which is also signed by both parties, and it shows that the one day of rent is calculated as  $\$1,900.00 / 31 = \$60.42$ . My arithmetic shows that the amount ought to be \$61.29, however, 3 documents show that the tenant agreed to the landlord keeping \$700.00 of the security deposit at the end of the tenancy, and I find that the tenant has failed to establish that there was no consent in writing or that the landlord is indebted to the tenant for return of the security deposit.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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: September 21, 2012.

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Residential Tenancy Branch