



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for return of all or part of the pet damage deposit or security deposit.

The tenant and the landlord attended the conference call hearing and both gave affirmed testimony. The parties were given the opportunity to cross examine each other on their testimony, however when asked if there were any questions of the tenant, the landlord indicated that there were none. Thereafter, the parties were given the opportunity to make closing submissions at which time the landlord wanted to question the tenant. It was explained to the parties that the procedure for the hearing had already been explained prior to any testimony being taken, and the landlord chose not to question the tenant and cross examination during closing submissions was not appropriate. The landlord threatened the tenant stating that the security deposit would not be returned and if the tenant persisted with the application, the landlord would sue the tenant. The landlord was cautioned that threats would not be tolerated in the hearing.

Neither party provided any evidentiary material prior to the commencement of the hearing, and all testimony taken has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2012 and ended on December 1, 2012. The tenant did not have the rent money for December 1, 2012 and the tenant had told the landlord that rent would be paid on December 3, 2012.

The landlord insisted that the tenant vacate the rental unit immediately and called a taxi for the tenant. The tenant told the landlord that notice was required, to which the landlord responded that no notice was required and the tenant was to leave immediately. No rent was paid for December, 2012.

The tenant further testified that a written tenancy agreement exists that states that rent is payable on the 1<sup>st</sup> day of each month, and the tenant testified that the rent was \$475.00 per month. At the outset of the tenancy, the landlord also collected a security deposit in the amount of \$200.00. No move-in or move-out condition inspection reports were completed, although the parties walked through the rental unit at the beginning of the tenancy.

The tenant had no place to go and stayed at a shelter for the month of December and then moved into another home in January, 2013 and sent a text message to the landlord which contained the tenant's forwarding address. The landlord has not responded to the text message and has not returned any of the security deposit to the tenant. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution in January, 2013 which clearly has the tenant's forwarding address in writing.

The landlord testified that the rental unit is shared accommodation with 3 other tenants who share the kitchen, bathroom and living room, and the landlord lives in the upper level of the house but does not share the kitchen or bathroom with the tenants. On September 27, 2012 the tenant paid \$715.00 for rent and the security deposit, being \$240.00 for the security deposit and the balance for rent. At the end of September, 2012 a bunch of stuff belonging to the tenant landed in the front yard of the rental unit.

On October 1, 2012 the tenant showed up at the rental unit in a taxi almost naked and demanded money from the landlord to pay for the taxi. The landlord paid the taxi and helped the tenant into the rental unit. The tenant told the landlord that the tenant had been in hospital and had suffered a heart attack.

The landlord further testified that alcohol was a big issue with the tenant. The other tenants who shared accommodation with the tenant had told the landlord that the tenant had vomited in the living room and in the bathroom and didn't clean it up. They were tired of the vomit not being cleaned up and food missing from the kitchen, and the landlord was conscious of the possibility of losing other tenants as a result of this tenant's behaviour.

Also, rent for the month of November, 2012 was not paid until November 8, 2012. On November 28, 2012, the landlord told the tenant that rent for December had to be paid on time or the tenant would have to move out. The tenant did not have the rent money on December 1, 2012 and the landlord told the tenant that the tenant had to leave immediately.

The landlord did not receive the tenant's text message which the tenant stated contained the tenant's forwarding address.

At the conclusion of the hearing, the landlord changed the testimony stating that the security deposit amount was \$238.00.

### Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit and pet damage deposit in full to a tenant or apply for dispute resolution to claim against the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to repay double the amount of such deposits.

In this case, the tenant testified that the security deposit was about \$200.00 and the landlord stated it was \$240.00 and then changed the testimony stating that it was \$238.00. The landlord had testified to receiving a total of \$715.00 from the tenant prior to the commencement of the tenancy, and did not dispute the amount of rent. If rent was \$475.00 per month and the landlord collected \$715.00, I find that the difference was the amount of the security deposit, which is \$240.00.

The landlord's position is that the tenant was warned about paying rent on time and the landlord was concerned about disturbances the tenant allegedly caused to other tenants, and causing the tenant to leave immediately seemed like the best solution to the landlord. Since rent for the month of December had not been paid, the landlord felt justified in keeping the security deposit. However, that is contrary to the *Act*. A security deposit, by law, is not money belonging to the landlord, but is trust money – held in trust on behalf of a tenant, and the law takes a very serious view of improper management of trust monies. An order is required for a landlord to keep trust monies, and if the landlord does not make such an application, the landlord may not keep it.

The tenant testified to sending the landlord a text message which contained the tenant's forwarding address in writing but did not receive a response. The landlord did not agree with that testimony and stated that no text message was received. In the absence of any evidence of that, I cannot find that the landlord received the tenant's forwarding

address in writing, nor what date it might have been received. However, I do find that the landlord holds a \$240.00 security deposit and has not made an application for dispute resolution to keep it.

Although I agree that the landlord received the tenant's forwarding address in writing on the Tenant's Application for Dispute Resolution, the tenant was not able to provide me with the date that the application was served on the landlord. I am not satisfied in the circumstances that the landlord received the tenant's forwarding address in writing on any specific date, in the application or otherwise, and I find that the tenant has established a monetary claim for the security deposit amount of \$240.00.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$240.00.

This order is final and binding on the parties and may be enforced.

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: April 17, 2013

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Residential Tenancy Branch