



# 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 repose to the tenant's application for the return of the security and pet deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All relevant evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to recover the security and pet deposit?

### Background and Evidence

The parties agree that this tenancy started on August 15, 2012 for a fixed term that was not due to expire until August 31, 2013. The landlord served the tenant with a Two Month Notice to End Tenancy on September 30, 2012 and the tenant vacated the rental unit in accordance with the effective date of this Notice on November 30, 2012. Rent for this unit was original \$1,500.00 per month but this was reduced to \$1,300.00 with the difference of \$200.00 for the tenant to do yard work at the property. The tenant paid a security deposit of \$650.00 and a pet deposit of \$350.00 on August 15, 2012.

The tenant testifies that the landlord did not offer the tenant an opportunity to attend a move in inspection and that is why the tenant has not signed the move in inspection report. The tenant testifies that the inspection was not done until September 06, 2012 in the tenant's absence. The tenant testifies that the landlord was not present when the tenant moved in and had left the keys in the mailbox for the tenant. The tenant testifies that the landlord only gave the tenant one opportunity to attend a move out inspection and as the landlord sent one request by e-mail to the tenant. The tenant testifies that the internet had been disconnected while the tenant moved and the tenant did not receive the landlord's request to attend the move out inspection until after the tenant had moved out. The tenant testifies that he gave the landlord a forwarding address in writing on November 30, 2012 and the landlord has failed to return either the security or pet deposits within 15 days. Therefore the tenant now seeks to recover double the deposits.

The tenant testifies that he agrees the landlord is entitled to recover a cost for utilities; however, the tenant disagrees with the landlord's calculations of the utility bills. The tenant testifies that his unit was the upper unit and there was a tenant living in the lower unit. The landlord has split the utility bills giving the tenant a 60 percent share of the bills. The tenant testifies that this was not documented on the tenancy agreement and the tenant feels that a 50 percent share would be more reasonable.

The tenant agrees that the landlord has sent the tenant a cheque for \$760.23 on May 02, 2013 in part payment of the security and pet deposits. The tenant testifies that he did not give the landlord permission to keep all or part of the deposits.

The landlord testifies that the cost of the utilities were deducted from the tenants security deposit after the tenant would not come to an agreement about the amounts the landlord could deduct for utilities and other issues. The landlord agrees that the tenancy agreement does not stipulate a percentage split of the utility bills with the other tenant. The landlord therefore agrees that the tenants share can be 50 percent of the bills. The landlord has provided copies of the Hydro bills for the term of the tenancy and

has calculated the tenants share at 60 percent. These figures were recalculated during the hearing to a total amount for Hydro from August 15, 2012 to November 30, 2012. The sum agreed upon by both parties is \$220.30.

The landlord testifies that the move in condition inspection was done on September 06, 2012 as the tenant was busy. The landlord testifies that this was done in the tenant's absence and the tenant was sent the form but would not sign it. The landlord agrees that the tenant was not given at least two opportunities to attend either inspection.

But during the move out inspection on November 30, 2012 the tenant's cleaners were still in the unit with the tenant's girlfriend.

### Analysis

I refer the parties to s. 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security and pet deposits to the tenant or to make a claim against them by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposits to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on November 30, 2012 and the tenancy ended on this date. As a result, the landlord had until December 15, 2012 to return the tenants security and pet deposits. I find the landlord did not return the security and pet deposits within the 15 allowable days but did return the amount of \$760.23 on May 02, 2013. Therefore, I find the tenant has established a claim for the return of double the security and pet deposit, pursuant to section 38(6)(b) of the *Act*, to an amount of **\$2,000.00**. The amount of **\$760.23** that the landlord has already returned will be deducted from the tenant's monetary award.

A further deduction of **\$220.30** will be made from the tenant's monetary award for the amount of utilities owed and agreed upon at the hearing.

As the tenant has been successful with this claim the tenant is also entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Double the security and pet deposits	\$2,000.00
Less amount already returned	(-\$760.23)
Less amount for utilities	(-\$220.30)
Plus filing fee	\$50.00
<b>Total amount due to the tenant</b>	<b>\$1,069.47</b>

### Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,069.47**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

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 30, 2013

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Residential Tenancy Branch