



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF, O

### Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security and/or pet damage deposits and recovery of the filing fee. The Tenant also seeks a monetary order for money owed or compensation for damage or loss and for the return of the security and/or pet damage deposits.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant states that the Landlord was served with the notice of hearing package and documentary evidence by Canada Post Registered Mail on May 29, 2013 by ExpressPost which required a signature for receipt of the package. The Tenant has provided a copy of the Customer Receipt Tracking Number as confirmation. I am satisfied that the Tenant has properly served the Landlord with the notice of hearing package and documentary evidence as per the Act.

At 1:32 pm, the Landlord's Application was dismissed without leave to reapply after 32 minutes as the Landlord has failed to attend the hearing and the Tenant is in attendance in response. The hearing proceeded under the Tenant's Application.

The Tenants withdrew their application for compensation and are only seeking the return of the pet damage and security deposits.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of the pet damage and security deposits?

### Background and Evidence

This Tenancy began on September 1, 2012 on a fixed term tenancy ending on August 31, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,500.00 payable on the 1<sup>st</sup> of each month and paid a \$750.00 security and a \$750.00 pet damage deposits on August 1, 2012.

The Tenants state that the notice to vacate was given on March 1, 2013 to move-out on March 31, 2013. The Tenants state that they vacated the rental unit on the last weekend of March on either March 30 or 31<sup>st</sup>. After notifying the Landlord verbally of their forwarding address, the Tenants provided their forwarding address after the Landlord required it in writing on March 3, 2013.

### Analysis

I accept the undisputed testimony of the Tenant and find that a claim for \$1,500.00 has been made. Section 38 of the Residential Tenancy Act states,

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.

I find based upon the undisputed testimony of the Tenant that the Landlord has failed to return the pet damage and security deposits within the allowed 15 day time period. The Tenant has provided their forwarding address in writing on March 3, 2013 and vacated the rental unit on March 31, 2013. The Tenants are entitled to a monetary order for \$1,500.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,500.00.

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: June 25, 2013

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Residential Tenancy Branch